

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/1. Nature of conventions.

AIR LAW (VOLUME 2 (2008) 5TH EDITION)

1. INTRODUCTION

(1) INTERNATIONAL AIR CONVENTIONS

1. Nature of conventions.

A large part of United Kingdom law relating to civil aviation is directly or indirectly derived from the provisions of international conventions. These conventions are the outcome of agreements between numbers of sovereign states providing for the mutual and uniform regulation of air traffic and related matters. They are, however, in the nature of multilateral treaties between states, and form part of United Kingdom law only in so far as they are incorporated into it by domestic legislation¹.

¹ See *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418, sub nom *MacLaine Watson & Co Ltd v Department of Trade and Industry* [1989] 3 All ER 523, HL. See further **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 71 et seq. As to the making of treaties generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 801 et seq. For an example of direct incorporation see the Carriage by Air Act 1961, which incorporates the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw, 12 October 1929; TS 11 (1933); Cmd 4284) (see PARA 8; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq), and for an example of indirect incorporation see the Civil Aviation Act 1982 and the orders and regulations made under it giving effect to the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) (see PARA 2 et seq).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/2. The Convention on International Civil Aviation (1944) (the 'Chicago Convention').

2. The Convention on International Civil Aviation (1944) (the 'Chicago Convention').

The Chicago Convention¹ was signed in 1944 by 38 states² and came into force on 4 April 1947³, superseding the Paris Convention⁴ and the Havana (Pan-American) Convention⁵. Its professed object is to lay down principles and make arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity, and may be operated soundly and economically⁶.

The Chicago Convention provides, however, that in case of war or national emergency its provisions do not affect the freedom of action of contracting states involved, whether as belligerents or as neutrals⁷.

1 I.e. the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742). The Convention has been amended by a number of protocols and is supplemented by 18 annexes. For United Kingdom legislation giving effect to the Convention see the Civil Aviation Act 1982 and the orders and regulations made under it; and PARAS 26-27, 50 et seq.

2 There are now 190 contracting states to the Chicago Convention. As to the status of the Convention and of the various amending protocols see Shawcross & Beaumont *Air Law* (4th Edn) vol 2 Appendix A.

3 I.e. 30 days after the deposit of the twenty-sixth instrument of ratification: see the Chicago Convention art 91(b). The Air Navigation Act 1947 was enacted to enable the provisions of the Chicago Convention to be incorporated into United Kingdom law, but it was repealed and replaced by the Civil Aviation Act 1949, certain provisions of which were, in turn, replaced by provisions of the Civil Aviation Act 1968 and the Civil Aviation Act 1971; the Civil Aviation Act 1982 consolidated the provisions of the Civil Aviation Acts 1949 to 1971. For each state ratifying or adhering after 4 April 1947 the Convention came into force on the thirtieth day after the deposit of its instrument of ratification or the receipt of its notification of adherence: Chicago Convention arts 91(b), 92(b).

4 I.e. the Convention relating to the Regulation of Aerial Navigation (Paris, 13 October 1919; TS 2 (1922); Cmd 1609). See further note 5.

5 I.e. the Convention on Commercial Aviation (Havana, 20 February 1928; 129 LNTS 223).

The parties to the Chicago Convention undertook to denounce the Paris Convention or the Havana (Pan-American) Convention if they were parties to either: see the Chicago Convention art 80. Contracting states also accepted the convention as abrogating all obligations and understandings between them which were inconsistent therewith, and undertook not to enter into any such obligations or understandings: art 82. Arrangements not inconsistent with the convention may be made, but these, as well as existing aeronautical agreements, must be registered with the Council of the International Civil Aviation Organisation ('ICAO'): arts 81, 83. As to ICAO see PARAS 20-22.

6 See the Chicago Convention preamble.

7 Chicago Convention art 89.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/3. Scope of the Chicago Convention.

3. Scope of the Chicago Convention.

The Chicago Convention¹ recognises that every state has complete and exclusive sovereignty over the airspace above its territory². It lays down the conditions upon which civil aircraft³ are to have the right to fly over and land in the territory of other contracting states⁴; provides for the nationality⁵ and registration⁶ of aircraft, and for the adoption of measures to facilitate air navigation⁷; and it lays down conditions to be fulfilled with respect to aircraft⁸.

1 The Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742): see PARA 2.

2 Chicago Convention art 1. The territory of a state is deemed to be the land areas and territorial waters adjacent to them under the sovereignty, suzerainty, protection or mandate of the state: art 2.

3 The Chicago Convention applies only to civil aircraft and not to state aircraft: art 3(a). Aircraft used in military, customs and police services are deemed to be state aircraft: art 3(b). State aircraft may not fly over or land in the territory of another contracting state without special authorisation: art 3(c).

4 See the Chicago Convention arts 5-16. See further PARA 4.

5 Aircraft have the nationality of the state in which they are registered: see the Chicago Convention art 17. See further PARA 358.

6 See the Chicago Convention arts 18-21.

7 See the Chicago Convention art 22 (facilitation of administrative formalities); art 23 (customs and immigration procedures); art 24 (customs duty); art 25 (assistance to aircraft in distress); art 26 (investigation of accidents); art 27 (exemption from seizure on patent claims); art 28 (air navigation facilities and standard systems).

8 See the Chicago Convention arts 29-36. Provision is made concerning documents to be carried in aircraft (see art 29), certificates of airworthiness and operating crew licences (see art 31), and licensing of personnel (see art 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/4. Flight over territory of contracting states.

4. Flight over territory of contracting states.

By the terms of the Chicago Convention¹ each contracting state agrees that all aircraft of other contracting states, being aircraft not engaged in scheduled international air services², have the right, subject to the observance of the terms of the Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes³ without obtaining prior permission⁴.

No scheduled international air service may be operated over or into the territory of a contracting state except with the special permission or other authorisation of that state, and in accordance with the terms of such permission or authorisation⁵. Each contracting state has the right to refuse permission to aircraft of other contracting states to take on in its territory passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory⁶.

1 The Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742): see PARA 2.

2 For the purposes of the Chicago Convention, 'air service' means any scheduled air service performed by aircraft for the public transport of passengers, mail or cargo (art 96(a)); and 'international air service' means an air service which passes through the air space over the territory of more than one state (art 96(b)). The Convention does not define 'scheduled international air services', but the Council of the International Civil Aviation Organisation ('ICAO') has adopted a definition which defines 'scheduled international air service' as a series of flights that possesses all the following characteristics: (1) it passes through the airspace over the territory of more than one state; (2) it is performed by aircraft for the transport of passengers, mail or cargo for remuneration, in such a manner that each flight is open to use by members of the public; (3) it is operated, so as to serve traffic between the same two or more points, either (a) according to a published timetable; or (b) with flights so regular or frequent that they constitute a recognisable systematic series: see ICAO Document 7278-C/841, Pt 1 (1952). As to the operation of such services see the text and note 5; and PARA 5. As to ICAO see PARAS 20-22.

3 'Stop for non-traffic purposes' means a landing for any purpose other than taking on or discharging passengers, cargo or mail: Chicago Convention art 96(d). However, it is clear from the context that aircraft have the right to take on or discharge passengers or goods not carried for remuneration, since art 5 provides that aircraft, if engaged in the carriage of passengers, cargo or mail for remuneration or hire on other than scheduled international air services, also have the privilege (subject to the provisions of art 7, which relates to cabotage: see the text and note 6) of taking on or discharging passengers, cargo or mail subject to the right of any state where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable. See generally the 'Analysis of the Rights Conferred by Article 5 of the Chicago Convention', issued by ICAO (ICAO Document 7278-C/841, Pt II).

4 Chicago Convention art 5. The state overflown has, however, the right to require the aircraft to land, and each contracting state reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without adequate air navigation facilities to follow prescribed routes or to obtain special permission for such flights: art 5. As to the meaning of 'territory of a state' see PARA 3 note 2. As to the exclusion of liability for trespass see PARA 653. See also note 5.

5 Chicago Convention art 6. The position as between EU member states is subject to the provisions of EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) on access for Community air carriers to intra-Community air routes: see PARA 98 et seq.

6 Chicago Convention art 7. The class of traffic thus prohibited is termed 'cabotage'. For the corresponding prohibition in United Kingdom domestic law see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 94. See also note 5.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/5. Scheduled international air services.

5. Scheduled international air services.

The special permission or other authorisation which is required for the operation of scheduled international air services¹ may be granted by means of a bilateral treaty between the states concerned, or by virtue of the adherence of the states concerned to an international agreement regarding such matters. Two such agreements already exist: the International Air Services Transit Agreement 1944 (commonly known as the 'Two Freedoms' Agreement), and the International Air Transport Agreement 1944 (commonly known as the 'Five Freedoms' Agreement)².

Each of the parties to the International Air Services Transit Agreement 1944, which include the United Kingdom, grants to all other parties to the agreement two freedoms of the air in respect of scheduled international air services: (1) the privilege to fly across its territory without landing; and (2) the privilege to land for non-traffic purposes³.

Each of the parties to the International Air Transport Agreement 1944, to which the United Kingdom is not a party, grants to all other parties the two freedoms mentioned above and three further freedoms of the air in respect of scheduled services: (a) the privilege to put down passengers, mail and cargo taken on in the territory of the state whose nationality the aircraft possesses; (b) the privilege to take on passengers, mail and cargo destined for the territory of that same state; and (c) the privilege to take on passengers, mail and cargo destined for the territory of any other party to the Agreement and the privilege to put down passengers, mail or cargo coming from any such territory⁴.

1 As to this requirement of special permission or other authorisation for the operation of scheduled international air services see PARA 4; and as to the meaning of 'scheduled international air services' see PARA 4 note 2. The position as between EC member states is subject to the provisions of EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) on access for Community air carriers to intra-Community air routes: see PARA 98 et seq.

2 See the International Air Services Transit Agreement 1944 (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) (the 'Two Freedoms' Agreement); and the International Air Transport Agreement 1944 (Chicago, 7 December 1944; Misc 6 (1945); Cmd 6614) (the 'Five Freedoms' Agreement). As to the status of both agreements see Shawcross & Beaumont *Air Law* (4th Edn) vol 2 Appendix A.

International Air Services Transit Agreement 1944 art I s 1. As to the meaning of 'territory' see PARA 3 note 2; definition applied by art V. 'Land for non-traffic purposes' is not defined in the Agreement but see the definition of 'stop for non-traffic purposes' as defined for the purposes of the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) (see PARA 4 note 3).

4 International Air Transport Agreement 1944 art I s 1. As to the meaning of 'territory' see PARA 3 note 2; definition applied by art VII.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/6. Annexes to the Chicago Convention.

6. Annexes to the Chicago Convention.

Each contracting state to the Chicago Convention¹ undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organisation in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation². To secure this end, the International Civil Aviation Organisation ('ICAO')³ is to adopt and amend from time to time international standards and recommended practices and procedures dealing with a variety of subjects⁴, which are to be designated annexes to the Chicago Convention⁵.

1 The Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742): see PARA 2.

2 Chicago Convention art 37. As to uniformity of regulations relating to flight and manoeuvre of aircraft see art 12; as to uniformity of customs and immigration procedures see art 23; and as to air navigation facilities and standard systems see art 28.

3 As to ICAO see PARAS 20-22.

4 Chicago Convention art 37.

5 Chicago Convention art 54(l). Annexes are adopted by the Council of ICAO. Provisions for the adoption, amendment and coming into force of annexes are contained in art 90. Annexes do not strictly bind the contracting states: art 38 provides that any state which finds it impracticable to comply with any such international standard or procedure, or deems it necessary to adopt regulations or practices differing from them, must notify ICAO of the state's departure from the set rules. The annexes to the Chicago Convention are: Annex 1 (personnel licensing), Annex 2 (rules of the air), Annex 3 (meteorology service for international air navigation), Annex 4 (aeronautical charts), Annex 5 (units of measurement to be used in air and ground operations), Annex 6 (operation of aircraft), Annex 7 (aircraft nationality and registration marks), Annex 8 (airworthiness of aircraft), Annex 9 (facilitation), Annex 10 (aeronautical telecommunications), Annex 11 (air traffic services), Annex 12 (search and rescue), Annex 13 (aircraft accident investigation), Annex 14 (aerodromes), Annex 15 (aeronautical information services), Annex 16 (environmental protection), Annex 17 (security), and Annex 18 (safe transport of dangerous goods by air).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/7. Disputes concerning the Chicago Convention.

7. Disputes concerning the Chicago Convention.

Disputes between contracting states as to the interpretation or application of the Chicago Convention¹ are decided by the Council of the International Civil Aviation Organisation ('ICAO')², with an appeal to an ad hoc arbitral tribunal agreed by the parties or to the International Court of Justice³.

1 The Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742): see PARA 2.

2 As to ICAO see PARAS 20-22.

3 See the Chicago Convention art 84. As to the International Court of Justice see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 499 et seq. Provision is made for the appointment of an arbitral court where the parties to the dispute cannot agree a tribunal and one or more of them have not accepted the Statute of the International Court of Justice: see the Chicago Convention art 85.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/8. Carriers by air.

8. Carriers by air.

The international carriage of passengers, baggage and cargo by air is governed by a series of Conventions dating back to the Warsaw Convention of 1929¹, which are applied in United Kingdom law via the Carriage by Air Act 1961, the Carriage by Air (Supplementary Provisions) Act 1962, subordinate legislation made under those Acts and European Community legislation on air carrier liability². Successive amendments to the Warsaw Convention have produced a series of modified versions³ which have now been consolidated in the Montreal Convention of 1999⁴: carriage within the European Community is governed exclusively by the Montreal Convention⁵, while international carriage will be governed by either the Montreal Convention or one of the versions of the Warsaw Convention depending on the identity of the carrier involved and which of the Conventions their state of registration or licensing has ratified⁶. There is also a residual class of carriage to which the statutory rules do not apply, which is subject to rules of common law.

1 Ie the Convention for the Unification of Certain Rules for International Carriage by Air (Warsaw, 12 October 1929; TS 11 (1933); Cmnd 4284).

2 See the Carriage by Air Act 1961 s 1; the Carriage by Air (Supplementary Provisions) Act 1962 s 1; the Carriage by Air Acts (Application of Provisions) Order 2004, SI 2004/1899; EC Council Regulation 2027/97 (OJ L285, 17.10.97, p 1) on air carrier liability in respect of the carriage of passengers and their baggage by air; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq.

3 Ie, principally, the Warsaw-Hague Convention following amendments made by the Hague Protocol of 1955 (28 September 1955; Misc 5 (1956); Cmd 9824) and the Warsaw-Hague-MP4 Convention following amendments made by Montreal Additional Protocol No 4 (25 September 1975; Misc 17 (1976); Cmnd 6483): these versions of the Warsaw Convention are enacted in the Carriage by Air Act 1961 Schs 1, 1A. The Warsaw Convention was also amended by the Guatemala Protocol of 1971 (Guatemala City, 8 March 1971; Misc 4 (1971), Cmnd 4691), which has never been brought into force, and by three further Additional Protocols agreed at Montreal in 1975 (25 September 1975; Misc 17 (1976); Cmnd 6480-6482), which to the extent they have any effect are of minor significance. There are also circumstances in which the Warsaw Convention continues to apply in unamended form, and where the supplementary provisions of the Guadalajara Convention of 1961 (ie the Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier (Guadalajara, 18 September 1961; TS 23 (1964); Cmnd 2354) (superseding Misc 13 (1961); Cmnd 1568)) have effect. For a detailed treatment of the Warsaw Convention in its various guises see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq.

4 Ie the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28 May 1999; TS 44 (2004); Cm 6369), enacted in the Carriage by Air Act 1961 Sch 1B (added by SI 2002/263). Where it applies, the Montreal Convention prevails over any other set of rules which apply to international carriage by air: see art 55; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121.

5 See EC Council Regulation 2027/97 (OJ L285, 17.10.97, p 1) on air carrier liability in the event of accidents; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 122.

6 See **CARRIAGE AND CARRIERS** vol 7 (2008) PARAS 121, 123.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/9. The International Health Regulations.

9. The International Health Regulations.

The International Health Regulations (2005)¹, adopted by the LVIIIth World Health Assembly in 2005, and which entered into force on 15 June 2007, contain detailed provisions designed to prevent the spread of disease through international air navigation².

1 The 2005 regulations are a revision of the International Health Regulations (Boston, 25 July 1969; Cmnd 4650) (originally published as Cmnd 4528), which were amended by the XXVIth World Health Assembly in 1973 and by the XXXIVth World Health Assembly in 1981.

2 Domestic legislation is contained in the Civil Aviation Act 1982 s 36 (see PARA 318); the Public Health (Control of Disease) Act 1984 ss 13-15, 76 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 885); and the Public Health (Aircraft) Regulations 1979, SI 1979/1434 (see PARAS 180, 318-319).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/10. The International Convention for the Unification of Certain Rules Relating to Damage Caused by Aircraft to Third Parties on the Surface (1933) and the Convention Relating to Damage Caused by Foreign Aircraft to Third Parties on the Surface (1952) (the 'Rome Conventions').

10. The International Convention for the Unification of Certain Rules Relating to Damage Caused by Aircraft to Third Parties on the Surface (1933) and the Convention Relating to Damage Caused by Foreign Aircraft to Third Parties on the Surface (1952) (the 'Rome Conventions').

The Rome Conventions¹ make provision in connection with damage caused by aircraft to third parties on the surface. The Rome Convention (1933) regulated the incidence of liability and contained provisions for the limitation of liability and for compulsory insurance²; however, it was only ratified by seven states. It was accordingly replaced by the Rome Convention (1952), which contains more workable rules concerning surface damage³. The United Kingdom has signed, but not ratified, both the Rome Conventions⁴. An amending Protocol to the Rome Convention (1952), to which the United Kingdom is not a party, was signed in Montreal in 1978⁵.

1 ie the International Convention for the Unification of Certain Rules Relating to Damage Caused by Aircraft to Third Parties on the Surface (Rome, 23 May 1933; Misc 6 (1935); Cmd 5056); and the Convention Relating to Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome, 7 October 1952; Misc 7 (1953); Cmd 8886). The Rome Convention (1952) came into force on 4 February 1958 (ie 90 days after the deposit of the fifth instrument of ratification: see art 33(1)). It has been ratified by 44 states (but not the United Kingdom: see the text and note 4). The amending Protocol (Montreal, 23 September 1978) has only been ratified or adhered to by six states and is not in force. For the lists of parties to the various instruments dealing with liability for surface damage see Shawcross & Beaumont *Air Law* (4th Edn) vol 2 Appendix A.

2 Detailed regulations as to insurance requirements were contained in the Insurance Protocol (Brussels, 29 September 1938), but this was ratified by only Brazil and France and is not in force.

3 See note 1.

4 It was at one time intended to give effect to the Rome Convention (1933) in the United Kingdom. The necessary enabling powers were enacted in the Civil Aviation Act 1949 but were never brought into force and have been repealed. As to liability for surface damage under United Kingdom law see PARA 652 et seq.

5 See the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface signed at Rome on 7 October 1952 (Montreal, 23 September 1978). The Protocol came into force on 25 July 2002.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/11. The Convention on International Recognition of Rights in Aircraft (1948) (the 'Geneva Convention').

11. The Convention on International Recognition of Rights in Aircraft (1948) (the 'Geneva Convention').

The Geneva Convention¹ is designed to protect the rights of property in, and possession of, aircraft according to the laws of the state of registration, including those in respect of leases of more than six months and mortgages. The United Kingdom has signed, but has not ratified or adhered to, the Geneva Convention. Her Majesty may by Order in Council make such provision as appears to be necessary or expedient for giving effect to the Geneva Convention². In time, the Geneva Convention will be replaced by the Cape Town Convention³.

1 I.e. the Convention on International Recognition of Rights in Aircraft (Geneva, 19 June 1948; Misc 7 (1948); Cmd 7510). The Convention is drawn up in English, French and Spanish, each text being of equal authenticity. It came into force on 17 September 1953 (ie 90 days after the deposit of the second instrument of ratification: see art 20(1)). For a list of parties see Shawcross & Beaumont *Air Law* (4th Edn) vol 2 Appendix A.

2 See the Civil Aviation Act 1982 s 90 (amended by the Transport Act 2000 s 97, Sch 8 Pt III para 7). At the date at which this volume states the law no such Order in Council had been made.

3 I.e. the Convention on International Interests in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment (Cape Town, 16 November 2001): see PARA 12.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/12. The Convention on International Interests in Mobile Equipment (2001) and the Protocol on Matters Specific to Aircraft Equipment (the 'Cape Town Convention and Protocol').

12. The Convention on International Interests in Mobile Equipment (2001) and the Protocol on Matters Specific to Aircraft Equipment (the 'Cape Town Convention and Protocol').

The Cape Town Convention and its associated Protocol¹ are intended to establish a legal framework for international interests in mobile equipment of high value or particular economic significance and to create an international registration system for their protection, replacing the Geneva Convention² in so far as relating to aircraft and aircraft objects. The Cape Town Convention is supplemented by the Protocol with specific reference to aircraft equipment in order to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment. The United Kingdom has signed the Convention and the Protocol, with the declaration in both cases that the European Community has competence with respect to certain matters governed by each, but ratification has not yet occurred³.

1 I.e. the Convention on International Interests in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment (Cape Town, 16 November 2001). The Convention and Protocol are both drawn up in English, Arabic, Chinese, French, Russian and Spanish, each text being equally authentic. For the text of the Convention and the Protocol see Shawcross & Beaumont *Air Law* (4th Edn) vol 2 Appendix A.

2 I.e. the Convention on International Recognition of Rights in Aircraft (Geneva, 19 June 1948; Misc 7 (1948); Cmd 7510): see PARA 11.

3 The Cape Town Convention and Protocol came into force three months after the date of the deposit of the third and eighth instruments of ratification, acceptance, approval or accession respectively: see the Cape Town Convention art 49(1); and the Protocol art 28(1). The Convention came into force on 1 April 2004, and the Protocol on 1 March 2006. The UK signed the Convention and the Protocol on 16 November 2001, and lodged the declarations on 11 March 2005.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/13. The Convention on Offences and certain other Acts Committed on board Aircraft (1963) (the 'Tokyo Convention').

13. The Convention on Offences and certain other Acts Committed on board Aircraft (1963) (the 'Tokyo Convention').

The Tokyo Convention¹ was signed in 1963 and deals with offences and certain other acts committed on board aircraft. The acts concerned are those which might or do jeopardise the safety of the aircraft or of persons or property in the aircraft, or which jeopardise the good order and discipline on board the aircraft; offences against penal law are within the scope of the Tokyo Convention². The Tokyo Convention regulates the powers of the aircraft commander and of states which are parties to the Convention in connection with such acts and offences³.

1 I.e. the Convention on Offences and certain other Acts Committed on board Aircraft (Tokyo, 14 September 1963; TS 136 (1969); Cmnd 4230) (superseding Misc 3 (1964); Cmnd 2261). The Convention came into force on 4 December 1969 (ie 90 days after the deposit of the twelfth instrument of ratification: see art 21(1)). For a list of countries which have ratified the Convention see the Tokyo Convention (Certification of Countries) Order 1977, SI 1977/1258; and the Tokyo Convention (Certification of Countries) (Supplementary) Order 1978, SI 1978/1534. Much of the Tokyo Convention was given effect in the United Kingdom by the Tokyo Convention Act 1967; although this Act has been repealed, the relevant provisions are re-enacted in the Civil Aviation Act 1982 (see PARA 642 et seq). The parties to the Convention and the conduct to which it applies are set out in the Extradition Act 2003 (Parties to International Conventions) Order 2005, SI 2005/46.

2 See the Tokyo Convention art 1(a); and PARA 622.

3 See the Tokyo Convention arts 5-10, 12-15; and PARAS 642-646.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/14. The Convention for the Suppression of Unlawful Seizure of Aircraft (1970) (the 'Hague Convention').

14. The Convention for the Suppression of Unlawful Seizure of Aircraft (1970) (the 'Hague Convention').

The Hague Convention¹ on hijacking was signed in 1970, and is expressed to be for the suppression of unlawful seizure of aircraft. It defines the offence as the act committed by a person who, on board an aircraft in flight², unlawfully by force or threat or any other form of intimidation, seizes or exercises control of that aircraft or attempts to perform any such act, or who is an accomplice of a person who performs or attempts to perform any such act³. The Convention regulates the powers and duties, in connection with such an offence, of the state in which the offender is present⁴.

1 ie the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 16 December 1970; Misc 5 (1971); Cmnd 4577). The Convention came into force on 14 October 1971 (ie 30 days after the deposit of the tenth instrument of ratification: see art 13(3)). It was drawn up in English, French, Russian and Spanish, each text being of equal authenticity. The Convention was set out in the Extradition (Hijacking) Order 1997, SI 1997/1763, Sch 1; and the states which are parties to the Convention were listed in Schs 2, 3. The Extradition (Hijacking) Order 1997, SI 1997/1763, has now lapsed on the repeal of the enabling legislation by the Extradition Act 2003 ss 218(b), 220, Sch 4. The Hague Convention was given effect in the United Kingdom by the Hijacking Act 1971; although this has since been repealed, the relevant provisions are re-enacted in the Aviation Security Act 1982 Pt I (ss 1-8) (see PARA 624 et seq). The parties to the Convention and the conduct to which it applies are set out in the Extradition Act 2003 (Parties to International Conventions) Order 2005, SI 2005/46.

2 For these purposes, an aircraft is considered to be 'in flight' at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation: Hague Convention art 3(1). In the case of a forced landing, the flight is deemed to continue until the competent authorities take over responsibility for the aircraft and for persons and property on board: art 3(1).

3 Hague Convention art 1. See further PARA 624.

4 Hague Convention arts 4-12. See also the Aviation Security Act 1982 Pt I; and PARA 624 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/15. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) (the 'Montreal Convention').

15. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) (the 'Montreal Convention').

The Montreal Convention¹ is expressed to be for the suppression of unlawful acts against the safety of civil aviation and was signed in 1971 to deal with those offences not covered by the Tokyo Convention² and the Hague Convention³. The Montreal Convention is concerned with acts of violence against the person which may destroy, damage or endanger the safety of, aircraft (in flight or in service) or air navigation facilities⁴. The Montreal Convention has been supplemented by a Protocol so as to include in its scope such acts committed at an airport serving international civil aviation⁵.

1 Ie the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 23 September 1971; Misc 26 (1971); Cmnd 4822). The Convention was drawn up in the English, French, Russian and Spanish languages, each text being of equal authenticity. The Convention came into force on 26 January 1973 (ie 30 days after the deposit of the tenth instrument of ratification: see art 15(3)). The Montreal Convention was given effect in United Kingdom law by the Protection of Aircraft Act 1973; although this has been repealed, the relevant provisions are re-enacted in the Aviation Security Act 1982 (see PARA 622 et seq). The parties to the Convention and the conduct to which it applies are set out in the Extradition Act 2003 (Parties to International Conventions) Order 2005, SI 2005/46.

2 Ie the Convention on Offences and certain other Acts Committed on board Aircraft (Tokyo, 14 September 1963; TS 136 (1969); Cmnd 4230) (superseding Misc 3 (1964); Cmnd 2261): see PARA 13.

3 Ie the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 16 December 1970; Misc 5 (1971); Cmnd 4577): see PARA 14.

4 See the Montreal Convention art 1.

5 See the Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Aviation (Montreal, 24 February 1988; TS 20 (1991); Cm 1470) (previously published Misc 6 (1988); Cm 378). The Protocol came into force on 6 August 1989 (ie 30 days after the deposit of the tenth instrument of ratification: see art 6(1)). The Montreal Protocol was set out in the Extradition (Aviation Security) Order 1997, SI 1997/1760, Sch 1 Pt II; and the countries which had ratified the Montreal Protocol were listed in the Extradition (Aviation Security) Order 1997, SI 1997/1760, Sch 2 Pt II, Sch 3 Pt IB, but the order has now lapsed on the repeal of the enabling authority by the Extradition Act 2003 ss 218(b), 220, Sch 4. The dispositions of the Montreal Protocol were enacted in United Kingdom law by means of amendments made to the Aviation Security Act 1982 by the Aviation and Maritime Security Act 1990.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/16. Regional conventions and agreements.

16. Regional conventions and agreements.

A number of conventions and agreements have been signed to set up regional organisations. Some of these conventions were made under the auspices of the International Civil Aviation Organisation ('ICAO')¹, such as those establishing the various regional Civil Aviation Conferences²; others are the result of concerted efforts to solve specific problems at a local level, such as those relating to commercial rights³, tariffs⁴, airworthiness⁵, air traffic control⁶, capacity⁷, or those relating to a specific region⁸.

1 As to ICAO see PARAS 20-22.

2 I.e. the European Civil Aviation Conference ('ECAC'), the Latin American Civil Aviation Commission ('LACAC'), and the African Civil Aviation Commission ('AFCAC'), which were established in 1954, 1973 and 1969 respectively. Among a number of functions bestowed on these organisations is to be found the drafting of conventions and agreements; see eg the role of ECAC in the agreements mentioned in notes 4, 7.

3 Eg the Multilateral Agreement on Commercial Rights of Non-scheduled Air Services in Europe (Paris, 30 April 1956; TS 42 (1960); Cmnd 1099), to which the United Kingdom is a party. As to non-scheduled air services see PARA 4. The position as between EU member states is subject to EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) on access for Community air carriers to intra-Community air routes: see PARA 98 et seq.

4 Eg the International Agreement on the Procedure for the Establishment of Tariffs for Scheduled Air Services (Paris, 10 July 1967; TS 79 (1968); Cmnd 3746), to which the United Kingdom is a party; and the International Agreement on the Procedure for the Establishment of Tariffs for Intra-European Scheduled Air Services (Paris, 16 June 1987), to which the United Kingdom is not a party. As to scheduled air services see PARA 4.

5 Eg the Multilateral Agreement relating to Certificates of Airworthiness for Imported Aircraft (Paris, 22 April 1960; TS 34 (1962); Cmnd 1687), to which the United Kingdom is a party. As to certificates of airworthiness see PARAS 376-384.

6 Eg the International Convention relating to Co-operation for the Safety of Air Navigation (Eurocontrol) (Brussels, 13 December 1960; TS 39 (1963); Cmnd 2114), to which the United Kingdom is a party. The Eurocontrol Convention has been added to and amended by Additional Protocol (Brussels, 6 July 1970; TS 119 (1972); Cmnd 5140); Additional Protocol (Brussels, 21 November 1978; Misc 4 (1979); Cmnd 7477); and Amending Protocol (Brussels, 12 February 1981; Misc 21 (1982); Cmnd 8662). Further protocols were signed in 1997 and 2002 but are not yet in force. As to Eurocontrol see PARA 23. As to air traffic control see PARA 161 et seq.

7 Eg the International Agreement on the Sharing of Capacity on Intra-European Scheduled Air Services (Paris, 16 June 1987), to which the United Kingdom is not a party. As to capacity see PARA 274.

8 Eg the Civil Aviation Council of Arab States ('CACAS') created in 1965.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/17. The Treaty on the Principles governing the Activities of States in the Exploration and Use of Outer Space including the Moon and other Celestial Bodies (1967) (the 'Outer Space Treaty').

17. The Treaty on the Principles governing the Activities of States in the Exploration and Use of Outer Space including the Moon and other Celestial Bodies (1967) (the 'Outer Space Treaty').

The Outer Space Treaty¹ is a treaty on the principles governing the activities of states in the exploration and use of outer space, including the moon and other celestial bodies. The Treaty was drawn up on the initiative of the United Nations², and was signed in 1967³.

1 The Treaty on Principles governing the Activities of States in the Exploration and Use of Outer Space including the Moon and other Celestial Bodies (Washington, London and Moscow, 27 January 1967; TS 10 (1968); Cmnd 3519) (superseding Misc 3 (1967); Cmnd 3198).

2 See Resolutions of the United Nations General Assembly (II) of 3 November 1947, 1884 (XVIII) of 17 October 1963, and 1962 (XVIII) of 13 December 1963.

3 The Outer Space Treaty was drawn up in English, Russian, French, Spanish and Chinese, each text being of equal authenticity. The Treaty came into force on 10 October 1967 upon the deposit of instruments of ratification by five governments, including those of the United States, the United Kingdom and the Union of Soviet Socialist Republics (see art 14(3)).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/18. Bilateral treaties.

18. Bilateral treaties.

Besides the principal international aeronautical conventions already mentioned, there exist numerous bilateral treaties¹ made between independent states for regulating such matters as the mutual right of flight into and over each other's territory, and the operation of scheduled international air services between such territories².

1 All aeronautical agreements existing at the date of the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742), and all arrangements subsequently made between the parties to the Convention (which must not be incompatible with the Convention), must be registered with the International Civil Aviation Organisation ('ICAO'): see arts 81, 83. The texts of all agreements so registered are published by ICAO. As to ICAO see PARAS 20-22. As to the Chicago Convention generally see PARA 2 et seq.

2 See the Chicago Convention art 6; and PARAS 4-5. Agreements for scheduled services entered into by the United Kingdom are usually published by the Stationery Office as Command Papers. For a full list of bilateral agreements to which the United Kingdom is a party, and for the standard form of agreement, see Shawcross & Beaumont *Air Law* (4th Edn) vol 2 Appendix A. The position as between EC member states is subject to EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) on access for Community air carriers to intra-Community air routes: see PARA 98 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(1) INTERNATIONAL AIR CONVENTIONS/19. 'Open skies' agreements.

19. 'Open skies' agreements.

'Open skies agreements' are bilateral aviation agreements with the United States the aim of which is to liberalise international aviation markets and minimise government intervention. Elements of such agreements include (1) free market competition; (2) the determination of pricing by market forces; (3) fair and equal competition; (4) co-operative marketing arrangements; (5) provisions for dispute settlement and consultation; (6) liberal charter arrangements; (7) arrangements for safety and security; and (8) liberal rights for all-cargo services¹. Such agreements had been concluded between the United States and the United Kingdom² and other EU member states, but the European Court of Justice had held³ that certain provisions of the agreements, especially those relating to nationality, were contrary to the EU Treaty⁴.

An agreement has now, however, been concluded between the European Union and the United States, signed on 30 April 2007 and taking effect from 31 March 2008⁵. The agreement replaces the equivalent existing bilateral agreements between the individual member states and the United States. It grants a number of additional rights for United Kingdom and European airlines, among them the right to operate scheduled services without restriction between the United States and any country in the European Union, including 'fifth freedom' services between any third country via the European Community and onwards, via any intermediate point, to any point or points in the United States and beyond⁶. Cargo carriers of member states are given the same rights, and additionally the 'seventh freedom' right to operate all-cargo services between the United States and any other country, is not restricted to member states⁷. Rights of ownership of airlines⁸ and the ability to exploit commercial opportunities⁹, and authorisation procedures for airlines¹⁰ are also liberalised to some extent. The agreement makes provision for safety¹¹ and security¹², customs duties and charges¹³, user charges¹⁴, environmental considerations¹⁵, consumer protection¹⁶, and computer reservation systems¹⁷. It also deals with competition¹⁸ and government subsidies or support adversely affecting the opportunity to compete¹⁹ and gives freedom from fares regulation²⁰.

The agreement contains a commitment from both sides to a second stage of negotiations aimed at achieving further liberalisation of the rules governing the EU-US aviation market, including further relaxation of the rules on foreign ownership and control of airlines²¹. If no second stage agreement has been reached within 12 months of the start of the review, the United States and the European Union each have the right to serve notice that they will suspend rights specified in the original agreement, though the suspension of such rights may only commence at the beginning of the next IATA traffic season 12 months after the date on which notice of suspension has been given²².

1 See the current US Model Open Skies Agreement (text of 10 January 2008), <http://www.state.gov/e/eeb/rls/othr/2008/19514.htm>.

2 I.e. the treaty governing UK-US aviation relations, commonly known as the 'Bermuda II' agreement.

3 See Case C-466/98, EC Commission v United Kingdom; Case C-467/98, EC Commission v Denmark; Case C-468/98, EC Commission v Sweden; Case C-469/98, EC Commission v Finland; Case C-471/98, EC Commission v Belgium; Case C-472/98, EC Commission v Luxembourg; Case C-475/98, EC Commission v Austria; Case C-476/98, EC Commission v Germany [2002] ECR I-9427, [2003] 1 CMLR 143, ECJ.

4 I.e. the Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179); see especially Title V (arts 70-80) (formerly Title IV (arts 74-84); renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97 p 1)) on the common transport policy.

- 5 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4).
- 6 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 3. European carriers are not, however, given the right of cabotage.
- 7 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 3.
- 8 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 6, Annex 4.
- 9 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 10.
- 10 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) arts 4, 5.
- 11 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 8.
- 12 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 9.
- 13 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 11.
- 14 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 12.
- 15 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 15.
- 16 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 16.
- 17 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 17.
- 18 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 20.
- 19 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 14.
- 20 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 13.
- 21 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 21. The second stage of negotiations must start within 60 days of the provisional application of the agreement (ie by 29 May 2008) (see art 21(1)) and a review of progress must be undertaken 18 months after the start of discussions (ie the end of November 2009) (see art 21(3)).
- 22 See the EU-US Air Transport Agreement (OJ L134, 25.05.2007, p 4) art 21(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(2) INTERNATIONAL BODIES/20. International Civil Aviation Organisation.

(2) INTERNATIONAL BODIES

20. International Civil Aviation Organisation.

The International Civil Aviation Organisation ('ICAO') was brought into being by the Chicago Convention¹. It consists of an Assembly, a Council and certain subordinate bodies². The aims and objects of ICAO are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport for a number of specified ends³.

Pursuant to the Chicago Convention⁴, the United Kingdom has granted to ICAO corporate capacity and immunities identical to those of foreign sovereigns⁵; similarly, diplomatic immunity is given in varying measures to the representatives of member governments and their staff, to certain high officials of the organisation and their families, and to other officials⁶.

1 See the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) Pt II (arts 43-66). As to the Chicago Convention generally see PARA 2 et seq. The permanent seat of ICAO is Montreal: art 45. An authoritative list of the countries who are at any particular time members of ICAO may be obtained from the Secretary General of ICAO at Montreal. ICAO is a specialised agency of the United Nations: see 8 UNTS 315 (1947).

2 Chicago Convention art 43. As to the Assembly see PARA 21; and as to the Council see PARA 22.

3 Chicago Convention art 44.

4 ICAO enjoys in the territory of each contracting state such legal capacity as may be necessary for the performance of its functions, and full juridical personality is to be granted wherever compatible with the constitution and law of the state concerned: Chicago Convention art 47. As to immunities and privileges see art 60.

5 See the Diplomatic Privileges (International Civil Aviation Organisation) Order 1949, SI 1949/134, arts 1-7. That order has effect under the International Organisations Act 1968: see s 12(5). See further **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 309.

6 See the Diplomatic Privileges (International Civil Aviation Organisation) Order 1949, SI 1949/134, arts 8-11 (amended by SI 1954/1465).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(2) INTERNATIONAL BODIES/21. Assembly of the International Civil Aviation Organisation.

21. Assembly of the International Civil Aviation Organisation.

The Assembly of the International Civil Aviation Organisation ('ICAO')¹ meets not less than once in three years². All contracting states have the right to be represented and to vote at meetings³; decisions are normally taken by a majority of votes⁴. The Assembly's main duties are to elect the contracting states to be represented on the Council⁵, to examine and decide on matters referred to it by the Council, and generally to deal with matters not specifically assigned to the Council⁶.

The Assembly has created a Legal Committee⁷, a Committee on Joint Support of Air Navigation⁸, a Committee on Aviation Environmental Protection⁹, and a Finance Committee¹⁰.

1 As to ICAO see PARA 20.

See the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) art 48(a) (amended at the 14th session of the Assembly, 15 September 1962). As to the Chicago Convention generally see PARA 2 et seq.

Provision is made for the holding of extraordinary meetings.

3 Chicago Convention art 48(b). Each state has one vote. For the circumstances in which the Assembly may suspend a state's right to vote see art 62.

4 Chicago Convention art 48(c). However, decisions relating to the admission to the Convention of states not members of the United Nations are to be by a four-fifths vote (see art 93); and those relating to amendments to the Convention are to be by a two-thirds vote (see art 94).

5 As to the Council see PARA 22.

6 See the Chicago Convention art 49(b), (c), (k).

7 See ICAO Document 7669 LC/139. The Committee advises the Council as to the interpretation and amendment of the Chicago Convention as well as other matters of public international air law; it prepares draft conventions on civil aviation to be adopted in conferences by the greatest possible number of states.

8 See ICAO Document 7325-C/852 (A1-7). The Committee is responsible for the provision, maintenance and improvement of airports and air navigation facilities.

9 See ICAO Document 9499. This Committee is the result of the amalgamation in 1983 of the Committee on Aircraft Noise and the Committee on Aircraft Engine Emissions.

10 See ICAO Document 7325 (A1-58).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(2) INTERNATIONAL BODIES/22. Council of the International Civil Aviation Organisation.

22. Council of the International Civil Aviation Organisation.

The Council of the International Civil Aviation Organisation ('ICAO')¹ is a permanent body, composed of 33 contracting states elected by the Assembly². Elections take place every three years³. The Council elects a president who holds office for three years⁴. Voting in Council is by a majority of the members⁵.

The Council has both mandatory⁶ and discretionary functions⁷. Among its mandatory functions are the appointment of an Air Transport Committee⁸, the establishment of an Air Navigation Commission⁹, the appointment of a Secretary General and other officers¹⁰, the notification of infractions of the Chicago Convention¹¹ and the adoption of annexes to the Chicago Convention¹².

In addition the Council has power to give financial assistance to a contracting state for the purpose of improving air navigation facilities in that state and, with the consent of the state, itself to provide and maintain such facilities there¹³.

1 As to ICAO see PARA 20.

2 See the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) art 50(a). As to the Chicago Convention generally see PARA 2 et seq. The membership of the Council has been increased on three occasions by Assembly Resolutions amending art 50(a): see ICAO Document 8167 (A13-P/2) (1961); ICAO Document 8931 (A17-A-P/7) (1971); and ICAO Doc 9118 (A21-P/6) (1976). On 26 October 1990 a further amendment was agreed to increase the membership to 36, but this amendment is not yet in force. In electing members the Assembly must give adequate representation to certain classes of state: see the Chicago Convention art 50(b). As to the Assembly see PARA 21.

3 Chicago Convention art 50(a).

4 Chicago Convention art 51.

5 Chicago Convention art 52. However, the adoption of annexes to the Convention requires a two-thirds vote: art 90. As to annexes to the Convention see PARA 6.

6 See the Chicago Convention art 54.

7 See the Chicago Convention art 55.

8 Chicago Convention art 54(d).

9 Chicago Convention art 54(e). The Commission is composed of 15 persons appointed from among persons nominated by contracting states (see art 56); its duties include considering, and recommending to the Council for adoption, modification of annexes to the Convention (see art 57).

10 Chicago Convention art 54(h).

11 Chicago Convention art 54(j), (k). For provisions as to disputes and default see arts 84-88.

12 Chicago Convention art 54(l).

13 See the Chicago Convention arts 68-76.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(2) INTERNATIONAL BODIES/23. Eurocontrol.

23. Eurocontrol.

The Eurocontrol Convention¹ relating to co-operation for the safety of air navigation was signed in 1960. It establishes a European organisation for the safety of air navigation, the European Organisation for the Safety of Air Navigation (known as 'Eurocontrol')². The Convention was to remain in force for 20 years; it has, however, been prolonged, and amended, by a Protocol signed in 1981³.

The particular aim of Eurocontrol was to provide for the common organisation of air traffic control services⁴. Two organs were created for that purpose: (1) a permanent commission for the safety of air navigation; and (2) an agency for the safety of air navigation⁵. The commission is composed of representatives of the contracting parties⁶. Its role was and continues to be to promote the adoption of measures and the installation of facilities for air navigation safety as well as an orderly and rapid flow of air traffic⁷; these tasks have remained but are now only part of a general policy⁸. For the first 20 years of its existence, the agency provided air traffic services, applied the regulations in force in the territories of the contracting states and established the tariffs which Eurocontrol was entitled to collect from users⁹. Since the coming into force of the Protocol prolonging the life of the Eurocontrol Convention, the agency is responsible for the performance of the tasks prescribed by the Convention or entrusted to it by the commission¹⁰.

A Protocol¹¹ was signed in 1997, revising and consolidating the Eurocontrol Convention. It gives Eurocontrol a new institutional structure, consisting of a general assembly, council and an agency. It also widens Eurocontrol's objectives, and the powers and responsibilities held by the commission and agency. However, it is not yet in force¹². In 2002 a further Protocol¹³ was signed, agreeing the accession of the European Union to the Eurocontrol Convention¹⁴.

1 I.e. the International Convention relating to Co-operation for the Safety of Air Navigation (Brussels, 13 December 1960; TS 39 (1963); Cmnd 2114). See also the Additional Protocol (Brussels, 6 July 1970; TS 119 (1972); Cmnd 5140); and the Amending Protocol (Brussels, 21 November 1978; Misc 4 (1979); Cmnd 7477). The Eurocontrol Convention was drawn up in English, French, German and Dutch; in case of inconsistency, the French text prevails. The Convention came into force on 1 March 1963. The Civil Aviation Act 1982 makes provision in the United Kingdom in connection with the Convention: see PARA 26 et seq.

Following the establishment of Eurocontrol, the Multilateral Agreement relating to the Collection of Route Charges (Brussels, 1970; TS 27 (1972); Cmnd 4916) was signed, with the main purpose of ensuring uniformity of charges for the use of air traffic services (see, however, note 3).

2 Eurocontrol Convention art 1(2) (substituted by the Amending Protocol (1981) art II). For the purposes of the Civil Aviation Act 1982 and of the Transport Act 2000 Pt I Ch IV (ss 73-84), 'Eurocontrol' means the European Organisation for the Safety of Air Navigation established by the International Convention relating to Co-operation for the Safety of Air Navigation (Brussels, 13 December 1960; TS 39 (1963); Cmnd 2114); and includes, except where the context otherwise requires, the Permanent Commission for the Safety of Air Navigation and the Air Traffic Services Agency comprised in that Organisation: Civil Aviation Act 1982 s 24; Transport Act 2000 s 84(1), (2). Under United Kingdom law, Eurocontrol has the legal capacity of a body corporate (see the Civil Aviation Act 1982 s 24, Sch 4 para 1(1) (s 24 amended by the Civil Aviation (Eurocontrol) Act 1983 s 3(1))) and is entitled to the exemptions and reliefs accorded to international organisations (see the Civil Aviation Act 1982 Sch 4 para 1(2)-(6) (amended by the Civil Aviation (Eurocontrol) Act 1983 s 2; and the Transport Act 2000 ss 97, 274, Sch 8 Pt III para 8, Sch 31 Pt I(2))). As to the recovery of charges for air navigation services provided to aircraft by Eurocontrol see the Transport Act 2000 Pt I Ch IV; and PARAS 588-597. Provision is made for the enforcement by Eurocontrol of determinations as to whether or not any sum is due to it in respect of air navigation services: see the Civil Aviation Act 1982 s 74A (added by the Civil Aviation (Eurocontrol) Act 1983 s 1). As to alleged abuse by Eurocontrol of its dominant position in detaining an aircraft for unpaid navigation charges see *Irish Aerospace (Belgium) NV v European Organisation for the Safety of Air Navigation* [1992] 1 Lloyd's Rep 383.

3 Amending Protocol (Brussels, 12 February 1981; Cmnd 8662). Eurocontrol has a broader role in the co-ordination of air traffic services throughout the relevant airspace, although it is not directly responsible for the provision of such services unless specifically agreed with a contracting state; this revised role of Eurocontrol entails a lesser financial burden on the organisation: see the Eurocontrol Convention art 1(1) (substituted by the Amending Protocol (1981) art II).

The Multilateral Agreement relating to the Collection of Route Charges (Brussels, 1970; TS 27 (1972); Cmnd 4916) (see note 1) was replaced at the same time by the Amending Protocol (relating to the collection of route charges) to the International Convention relating to co-operation for the safety of air navigation (Eurocontrol) (Brussels, 12 February 1981; Misc 21 (1982); Cmnd 8662).

4 See the Eurocontrol Convention art 1(1) (as substituted: see note 3).

5 Eurocontrol Convention art 1(2) (as substituted: see note 2).

6 See the Eurocontrol Convention art 5 (substituted by the Amending Protocol (1981) art V). To allow both civil and military interests to be represented, each contracting state may appoint several delegates although it will only have one vote: Eurocontrol Convention art 5(1) (as so substituted). When negotiating the establishment and collection of charges (see art 2(1)(I)), the commission is enlarged to include representatives of non-member states which are parties to the Multilateral Agreement relating to the collection of route charges: Eurocontrol Convention art 5(2) (as so substituted).

7 See the Eurocontrol Convention art 2 (substituted by the Amending Protocol (1981) art IV). The commission makes recommendations and decisions and gives directives to the agency: Eurocontrol Convention art 6 (amended by the Amending Protocol (1981)).

8 See the Eurocontrol Convention art 2 (as substituted: see note 7).

9 See the Eurocontrol Convention arts 14, 17-20, 38 (as originally agreed). Articles 14, 20 and 38 were revoked by the Amending Protocol (1981). The relevant provisions are now the Eurocontrol Convention arts 15-17 (substituted by the Amending Protocol (1981) arts XIII-XV).

As to charges payable for navigation services provided in the United Kingdom see PARA 588 et seq.

10 Eurocontrol Convention art 1(2) (as substituted: see note 2).

11 Ie the Protocol Consolidating the Eurocontrol International Convention (Brussels, 27 June 1997) art 1. For the text of the Protocol see Shawcross & Beaumont *Air Law* (4th Edn) vol 2 Appendix A.

12 The Consolidating Protocol is to come into force on 1 July or 1 January after the last of the 27 state parties to the Eurocontrol Convention have ratified, approved or accepted it: Consolidating Protocol art 2(3). The Consolidating Protocol was ratified by the UK on 25 February 2003.

13 Ie the Protocol on the accession of the European community to the Eurocontrol International Convention (Brussels, 8 October 2002).

14 This Protocol was ratified by the UK on 20 April 2006.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(2) INTERNATIONAL BODIES/24. Joint Aviation Authorities and European Aviation Safety Agency.

24. Joint Aviation Authorities and European Aviation Safety Agency.

A body called the Joint Aviation Authorities ('JAA') was established in 1990 as an associated body of the European Civil Aviation Conference ('ECAC')¹ to oversee the development, acceptance and implementation of joint aviation requirements ('JAR')². The secretariat is based in the Netherlands. A group of staff seconded by national aviation authorities on a full-time basis is known as Central JAA.

The European Aviation Safety Agency ('EASA') was established in 2002 and became operational in 2003 as the centrepiece of the European Union's strategy for aviation safety³. It is based in Cologne and deals with airworthiness and environmental certification⁴, issues rules and guidance material on acceptable means of compliance in respect of certification and continuing airworthiness⁵, and is responsible for type-certification of specific models of aircraft, engines or parts approved for operation in the European Union, and for the airworthiness and environmental certification of all aeronautical products, parts, and appliances designed, manufactured, maintained or used by persons under the regulatory oversight of EU member states. EASA develops common safety and environmental rules at the European level. It monitors the implementation of standards through inspections in the member states and provides the necessary technical expertise, training and research. It is an independent EU body under European law, accountable to the member states and the EU institutions. A management board with representatives from the member states and the European Commission adopts EASA's budget and work programme. The aviation industry is actively involved in the Agency's work through a number of consultative and advisory committees. There is also an independent Board of Appeal.

The European Commission has proposed to extend EASA's responsibilities to establishing rules and procedures for civil aviation operations, the licensing of crews in the member states and certification of non-member state airlines.

1 As to ECAC see PARA 16.

2 See the Arrangements entered into by the Directors General of Civil Aviation of 19 ECAC member states in Cyprus in September 1990.

3 See EC Parliament and Council Regulation 1592/2002 (OJ L240, 7.9.2002, p 1) on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (amended by EC Commission Regulation 334/2007 (OJ L88, 29.3.2007, p 39), EC Commission Regulation 1701/2003 (OJ L243, 27.09.2003, p 5), and European Parliament and Council Regulation 1643/2003 (OJ L245, 29.09.2003, p 7)).

4 See EC Commission Regulation 1702/2003 (OJ L243, 27.9.2003, p 6) laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (amended by EC Commission Regulation 375/2007 (OJ L94, 4.4.2007, p 3), EC Commission Regulation 335/2007 (OJ L88, 29.3.2007, p 40), EC Commission Regulation 706/2006 (OJ L122, 09.05.2006, p 16), and EC Commission Regulation 381/2005 (OJ L61, 08.03.2005, p 3)).

5 See under EC Commission Regulation 2042/2003 (OJ L315, 28.11.2003, p 1) on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (amended by EC Commission Regulation 376/2007 (OJ L94, 4.4.2007, p 18) and EC Commission Regulation 707/2006 (OJ L122, 09.05.2006, p 17)).

UPDATE

24 Joint Aviation Authorities and European Aviation Safety Agency

NOTE 3--Regulation 1592/2002 replaced: European Parliament and EC Council Regulation 216/2008 (OJ L79, 19.3.2008, p 1) (amended by EC Commission Regulation 690/2009 (OJ L199, 31.7.2009, p 6), European Parliament and EC Council Regulation 1108/2009 (OJ L309, 24.11.2009, p 51)).

NOTE 4--Regulation 1702/2003 amended: EC Commission Regulation 1057/2008 (OJ L283, 28.10.2008, p 30).

NOTE 5--Regulation 2042/2003 amended: EC Commission Regulation 1056/2008 (OJ L283, 28.10.2008, p 5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(2) INTERNATIONAL BODIES/25. Non-governmental bodies.

25. Non-governmental bodies.

There is also in existence a number of private or semi-private organisations which are active in the field of international aviation of which perhaps the most important is the International Air Transport Association ('IATA'), an association of air transport service operators which has done much work for securing uniformity in the traffic documents and conditions of carriage applicable to transport by air¹. This has led to competition from charter airlines, whose own organisation is the International Air Charter Association ('IACA'). The Fédération Aéronautique Internationale ('FAI') has done much to facilitate private international air travel and sporting flying.

1 IATA was incorporated in 1945 by a special Act of the Canadian Parliament. Its head office is in Montreal.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(3) UNITED KINGDOM LAW/26. Primary legislation.

(3) UNITED KINGDOM LAW

26. Primary legislation.

United Kingdom air law is principally regulated by statute and by statutory instruments¹ made under statutory powers. The main statutes include the Civil Aviation Act 1982² (which confers comprehensive enabling powers for the regulation of civil aviation), the Airports Act 1986³ (which deals with the regulation and use of airport facilities), and Part I of the Transport Act 2000⁴ (which deals with air traffic services). More recently, legislation has been enacted to allow financial assistance for air transport services in Wales⁵.

Much of the legislation gives effect to international agreements. The Civil Aviation Act 1982 makes provision⁶ for carrying out the requirements of the Chicago Convention⁷, and gives effect to provisions of the Tokyo Convention⁸. The Carriage by Air Act 1961 enacts in United Kingdom law the provisions of the amended Warsaw Convention⁹, and the provisions of the Montreal Convention¹⁰ (which replaces the various agreements and protocols comprising the Warsaw Convention). The Guadalajara Convention¹¹ is given effect in the United Kingdom by the Carriage by Air (Supplementary Provisions) Act 1962. The Aviation Security Act 1982 gives effect to provisions of the Hague Convention on hijacking¹² and the Montreal Convention and Protocol on unlawful acts¹³, and enables the rules of international agreements for the protection of civil aviation to be applied in the United Kingdom¹⁴.

1 As to subordinate legislation see PARA 27.

2 See PARA 34 et seq.

3 See PARA 182 et seq.

4 I.e the Transport Act 2000 Pt I (ss 1-107): see PARA 139 et seq.

5 See the Transport (Wales) Act 2006 s 11; and PARA 46.

6 See the Civil Aviation Act 1982 s 60; and PARA 353.

7 I.e the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742): see PARA 2 et seq.

8 I.e the Convention on Offences and certain other Acts Committed on board Aircraft (Tokyo, 14 September 1963; TS 136 (1969); Cmnd 4230) (superseding Misc 3 (1964); Cmnd 2261): see PARAS 13, 642 et seq.

9 I.e the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw, 12 October 1929; TS 11 (1933); Cmd 4284): see PARA 8; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq.

10 I.e the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28 May 1999; Misc 4 (2000); Cm 4651): see PARA 8; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq.

11 I.e the Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier (Guadalajara, 18 September 1961; TS 23 (1964); Cmnd 2354) (superseding Misc 13 (1961); Cmnd 1568): see PARA 8; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARAS 121, 131.

12 I.e the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 16 December 1970; Misc 5 (1971); Cmnd 4577): see PARAS 14, 624.

13 I.e the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 23 September 1971; Misc 26 (1971); Cmnd 4822) and Protocol for the Suppression of Unlawful Acts of Violence at

Airports serving International Aviation (Montreal, 24 February 1988; TS 20 (1991); Cm 1470) (Protocol previously published Misc 6 (1988); Cm 378): see PARAS 15, 622 et seq.

14 See PARAS 13-15, 622 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(3) UNITED KINGDOM LAW/27. Subordinate legislation.

27. Subordinate legislation.

Much of the primary legislation concerned with air law¹ contains provisions for subordinate legislation covering a wide range of subjects, and taking the form of Orders in Council, orders, regulations and rules. Orders in Council under these provisions are made by Her Majesty in Council, in practice upon the advice of the responsible minister, on whom is conferred the power to make orders, regulations and rules. In certain cases, Orders in Council may confer power to make regulations².

The principal pieces of subordinate legislation regulating civil aviation are the Air Navigation Order 2005³ (which makes general provision for the registration, operation and crewing of aircraft, and for air traffic services), the Air Navigation (General) Regulations 2006⁴ (which supplement and amplify the provisions of the Air Navigation Order 2005), the Rules of the Air Regulations 2007 (commonly referred to as the 'Rules of the Air')⁵ (which set out specific rules with which aircraft and aerodromes must comply), the Civil Aviation Authority Regulations 1991 (which make provision in connection with the powers and duties of the Civil Aviation Authority ('CAA'))⁶, the Carriage by Air Acts (Application of Provisions) Order 2004⁷ (which applies, with modifications, versions of the Warsaw Convention⁸, the Guadalajara Convention⁹ and the Montreal Convention¹⁰ to various types of international and non-international carriage by air), the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996¹¹ (which contains provisions relating to the investigation of air accidents and other incidents), the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005¹² (which makes more specific provision), and the two orders concerned with noise certification (ie the Aeroplane Noise Regulations 1999¹³ and the relevant provisions of the Air Navigation (Environmental Standards) Order 2002¹⁴) (which prohibit the operation of aircraft which do not comply with noise standards)¹⁵.

1 See PARA 26.

2 See eg the Civil Aviation Act 1982 s 102, Sch 13 Pt II, Pt III para 3(1).

3 See the Air Navigation Order 2005, SI 2005/1970; and PARA 353 et seq.

4 See the Air Navigation (General) Regulations 2006, SI 2006/601.

5 See the Rules of the Air Regulations 2007, SI 2007/734; and PARA 357.

6 See the Civil Aviation Authority Regulations 1991, SI 1991/1672. As to the CAA see PARA 50 et seq.

7 See the Carriage by Air Acts (Application of Provisions) Order 2004, SI 2004/1899; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq.

8 Ie the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw, 12 October 1929; TS 11 (1933); Cmd 4284); see PARA 8; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq.

9 Ie the Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier (Guadalajara, 18 September 1961; TS 23 (1964); Cmd 2354) (superseding Misc 13 (1961); Cmd 1568); see PARA 8; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARAS 121, 131.

10 Ie the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28 May 1999; Misc 4 (2000); Cm 4651); see PARA 8; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq.

11 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798; and PARAS 598, 614.

12 See the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005, SI 2005/2693; and PARA 604.

13 See the Aeroplane Noise Regulations 1999, SI 1999/1452.

14 See the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, Pt II (arts 4-7).

15 See PARA 396 et seq.

UPDATE

27 Subordinate legislation

TEXT AND NOTE 14--SI 2002/798 Pt II replaced: Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, Pt 2 (arts 4-13).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(3) UNITED KINGDOM LAW/28. European Community legislation.

28. European Community legislation.

To an increasing extent United Kingdom air law is affected by European Community law. Notable examples include regulations on (1) the licensing of air carriers¹; (2) access for Community air carriers to intra-Community air routes²; (3) air fares and rates for air services³; (4) the harmonisation of technical requirements and administrative procedures in civil aviation⁴; (5) the establishment of a European Safety Agency⁵; (6) insurance requirements for air carriers and aircraft operators⁶; (7) the safety of third-country aircraft using European Community airports⁷; (8) the rights of disabled travellers⁸; and (9) a single European sky⁹.

1 See EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) on licensing of air carriers. As to the licensing of air carriers see PARA 98 et seq. As to carriage by air generally see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq.

2 See EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) on access for Community air carriers to intra-Community air routes.

3 See EC Council Regulation 2409/92 (OJ L240, 24.8.92, p 15) on fares and rates for air services. See further **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 97.

4 See EC Council Regulation 3922/91 (OJ L373, 31.12.91, p 4) on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (amended by EC Commission Regulation 2176/96 (OJ L291, 14.11.1996, p 15), EC Commission Regulation 1069/99 (OJ L130, 26.5.1999, p 16), EC Commission Regulation 2871/2000 (OJ L333, 29.12.2000, p 47) and European Parliament and EC Council Regulation 1592/2002 (OJ L240, 7.9.2002, p 1), European Parliament and EC Council Regulation 1899/2006 (OJ L377, 27.12.2006, p 1), and European Parliament and EC Council Regulation 1900/2006 (OJ L377, 27.12.2006, p 176)). As to the technical requirements for aircraft see PARA 353 et seq.

5 See European Parliament and EC Council Regulation 1592/2002 (OJ L240, 7.9.2002, p 1) on common rules in the field of Aviation and establishing a European Aviation Safety Agency. As to EASA see PARA 24.

6 See European Parliament and EC Council Regulation 785/2004 (OJ L138, 30.4.2004, p 1) on insurance requirements for air carriers and aircraft operators (implemented by the Civil Aviation (Insurance) Regulations 2005, SI 2005/1089).

7 See European Parliament and EC Council Directive 2004/36 (OJ L143, 30.4.2004, p 76) on the safety of third-country aircraft using European Community airports (implemented by the Civil Aviation (Safety of Third-Country Aircraft) Regulations 2006, SI 2006/1384); and European Parliament and EC Council Regulation 2111/2005 (OJ L344, 27.12.2005, p 15) on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier (implemented by the Civil Aviation (Provision of Information to Passengers) Regulations 2006, SI 2006/3303).

8 See EC Council Regulation 1107/2006 (OJ L204, 26.7.2006, p 1) concerning the rights of disabled persons with reduced mobility when travelling by air (applying in full from 26 July 2008) (implemented by the Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007, SI 2007/1895).

9 See European Parliament and EC Council Regulation 549/2004 (OJ L96, 31.3.2004, p 1) laying down the framework for the creation of the single European sky (the framework Regulation); European Parliament and EC Council Regulation 550/2004 (OJ L96, 31.3.2004, p 10) on the provision of air navigation services in the single European sky (the service provision Regulation); European Parliament and EC Council Regulation 551/2004 (OJ L96, 31.3.2004, p 20) on the organisation and use of the airspace in the single European sky (the airspace Regulation); and European Parliament and EC Council Regulation 552/2004 (OJ L96, 31.3.2004, p 26) on the interoperability of the European Air Traffic Management network (the interoperability Regulation). For rules made with regard to Regulations 549/2004, 550/2004 and 551/2004, see EC Commission Regulation 2096/2005 (OJ L335 21.12.2005 p 13) laying down requirements for the provision of air navigation services, EC Commission Regulation 2150/2005 (OJ L342 24.12.2005 p 20) laying down common rules for the flexible use of airspace, the

Single European Sky (National Supervisory Authority) Regulations 2004, SI 2004/1958, and the Single European Sky (Functions of the National Supervisory Authority) Regulations 2006, SI 2006/3104.

UPDATE

28 European Community legislation

NOTES 1-3--Regulations 2407/92, 2408/92, 2409/92 replaced: European Parliament and EC Council Regulation 1008/2008, see PARA 98 NOTE 1.

NOTES 4, 5--Regulation 1592/2002 replaced: European Parliament and EC Council Regulation 216/2008 (OJ L79, 19.3.2008, p 1) (amended by EC Commission Regulation 690/2009 (OJ L199, 31.7.2009, p 6), European Parliament and EC Council Regulation 1108/2009 (OJ L309, 24.11.2009, p 51)).

NOTE 6--Regulation 3922/91 amended: EC Commission Regulation 859/2008 (OJ L254, 20.9.2008, p 1).

NOTE 7--Directive 2004/36 replaced: European Parliament and EC Council Regulation 216/2008 (OJ L79, 19.3.2008, p 1) (amended by EC Commission Regulation 690/2009 (OJ L199, 31.7.2009, p 6)) on common rules in the field of civil aviation and establishing a European Aviation Safety Agency. The date of the repeal depends on the date of implementation of certain other articles of the new regulation, but may not be later than 8 April 2012 (see art 70). SI 2006/1384 amended: SI 2009/3015.

NOTE 9--Regulation 549/2004, Regulation 550/2004, Regulation 551/2004, and Regulation 552/2004 amended: European Parliament and EC Council Regulation 1070/2009 (OJ L300, 14.11.2009, p 34). As to provision for enforcement of Regulations 550/2004, 552/2004, 2096/2005 and EC Commission Regulation 2096/2005 laying down common requirements for the provision of air navigation services see the Air Navigation (Single European Sky) (Penalties) Order 2009, SI 2009/1735.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(3) UNITED KINGDOM LAW/29. Application of common law.

29. Application of common law.

In addition to the legislation which deals specifically with aeronautical matters¹, many questions arising in connection with civil aviation are wholly or partially governed by the rules of the common law or by statutes of general application. Thus, in the field of tort, the law of negligence is relevant in relation to certain classes of accident arising out of the operation of aircraft²; and the law of trespass and nuisance may in some cases govern the liability of aircraft owners and operators for damage caused to persons or property on the surface of the ground or water³. The law of contract, and in particular the general law relating to carriers, requires consideration in connection with matters arising out of the carriage of passengers or goods by air⁴.

1 See PARA 26.

2 As to tort generally see **TORT** vol 97 (2010) PARA 401 et seq; and as to negligence generally see **NEGLIGENCE**.

3 See PARA 658. As to trespass generally see **TORT** vol 97 (2010) PARA 562 et seq. As to nuisance generally see **NUISANCE**; and **TORT** vol 97 (2010) PARA 592 et seq.

4 As to the law relating to the carriage of passengers and cargo by air see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq. As to the law of contract generally see **CONTRACT**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(4) TERRITORIAL SCOPE OF ENACTMENTS/30. Extra-territorial effect of certain instruments.

(4) TERRITORIAL SCOPE OF ENACTMENTS

30. Extra-territorial effect of certain instruments.

The question whether a particular enactment extends, as part of the law of the United Kingdom¹, to acts done outside the United Kingdom, depends in each case upon the true construction of the provision itself and of the statute or subordinate instrument as a whole².

The Civil Aviation Act 1982 confers express power to make subordinate instruments having extra-territorial operation, in so far as they (1) apply to aircraft registered in the United Kingdom (wherever the aircraft may be); or (2) prohibit, require or regulate the doing of anything by its occupants or personnel (wherever they may be), or the doing of anything in relation to such aircraft by Commonwealth citizens or citizens of the Republic of Ireland (wherever they may be)³. In relation to aircraft on or in the neighbourhood of offshore installations⁴ or renewable energy installations⁵, this power applies to all aircraft and not only to aircraft registered in the United Kingdom, and it applies irrespective of a person's nationality or of the law under which a body corporate was incorporated⁶.

1 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706 preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man is within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

2 The presumption is that statutes apply only to the United Kingdom unless a contrary intention clearly appears: see **STATUTES** vol 44(1) (Reissue) PARA 1317 et seq. In the Civil Aviation Act 1982, a reference to a country or territory generally includes, unless the context otherwise requires, a reference to its territorial waters: s 106(1).

3 Civil Aviation Act 1982 s 102, Sch 13 Pt II, Pt III para 6(1). For these purposes, 'personnel' includes the commander or other person in charge of the aircraft and all other crew members: Sch 13 Pt III para 6(3). As to Commonwealth citizens and citizens of the Republic of Ireland see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**.

In so far as it applies to the making of an air navigation order, the reference to aircraft registered in the United Kingdom has effect as if it included reference to any aircraft which is not so registered but is for the time being under the management of a person who, or of persons each of whom, is qualified to be the owner of a legal or beneficial interest in an aircraft registered in the United Kingdom: see Sch 13 Pt III para 6(4).

4 As to the meaning of 'offshore installation' for these purposes see the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3; and **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1684 (definition applied by the Civil Aviation Act 1982 Sch 13 Pt III para 6(5)).

5 As to the meaning of 'renewable energy installation' see the Energy Act 2004 Pt 2 Ch 2 (ss 84-104); and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1311 note 2 (definition applied by the Civil Aviation Act 1982 Sch 13 Pt III para 6(9) (added by the Energy Act 2004 s 101(1), (4))).

6 Civil Aviation Act 1982 Sch 13 Pt III para 6(5), (7) (Sch 13 Pt III para 6(7) added by the Energy Act 2004 s 101(4)). For these purposes the neighbourhood of an installation includes anywhere within 500 metres of that installation: Civil Aviation Act 1982 Sch 13 Pt III para 6(8) (added by the Energy Act 2004 s 101(4)).

An Air Navigation Order may make provision in relation to renewable energy installations located within a renewable energy zone as if those installations were located in a part of the United Kingdom: Civil Aviation Act 1982 Sch 13 Pt III para 7(1) (Sch 13 Pt III para 7 added by the Energy Act 2004 s 101(5)). Such provision may apply to any person irrespective of nationality or (in the case of a body corporate) of the law under which it was incorporated: Civil Aviation Act 1982 Sch 13 Pt III para 7(2) (as so added). As to the meaning of 'renewable energy zone' for these purposes see the Energy Act 2004 Pt 2 Ch 2; and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1310 (definition applied by the Civil Aviation Act 1982 Sch 13 Pt III para 7(3) (as so added)).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(5) CROWN AND MILITARY AIRCRAFT/31. Application of enactments to Crown aircraft.

(5) CROWN AND MILITARY AIRCRAFT

31. Application of enactments to Crown aircraft.

The Civil Aviation Act 1982 does not apply to aircraft belonging to or exclusively employed in the service of the Crown¹; but certain provisions of that Act² and any Orders in Council, orders or regulations made under them may, by Order in Council, be applied with or without modification to such aircraft³.

The Air Navigation Order 2005⁴ applies, except where otherwise expressly stated, to all aircraft belonging to or in the service of the Crown other than military aircraft⁵. Where, however, a military aircraft is flown by a civilian pilot and is not commanded by a person acting in the course of his duty as a member of any of Her Majesty's forces, or as a member of a visiting force⁶ or international headquarters⁷, certain of the safety provisions of the Order must be complied with⁸.

Any regulations made for the investigation of accidents to aircraft may be made to apply to Crown aircraft⁹.

1 See the Civil Aviation Act 1982 s 101(1)(a), (2) (s 101(2) amended by SI 2001/4050). The Civil Aviation Act 1982 s 101(1)(a) refers to the fact that the provisions of ss 60, 61, 75-77, 81, 87, 89, 91, 96, 97 and Sch 13 Pt III do not, in the absence of an exercise of the power conferred by s 101, apply to aircraft belonging to or exclusively employed in the service of the Crown.

2 I.e the provisions referred to in note 1 and those to which the Civil Aviation Act 1982 Sch 13 Pt III para 5 applies.

3 See the Civil Aviation Act 1982 s 101(1)(a), (2), Sch 13 Pt III para 5 (s 101(2) as amended: see note 1). Section 76 (which replaces the Civil Aviation Act 1949 s 40 (repealed)) (see PARAS 653-655) applies to Crown aircraft by virtue of the Civil Aviation (Crown Aircraft) Order 1970, SI 1970/289.

4 I.e the Air Navigation Order 2005, SI 2005/1970.

5 See the Air Navigation Order 2005, SI 2005/1970, art 152(1)-(5). For these purposes, 'military aircraft' means the naval, military or air force aircraft of any country, any aircraft being constructed for such forces under a contract entered into by the Secretary of State, and any aircraft in respect of which there is in force a certificate issued by him that the aircraft is to be treated for the purposes of the Air Navigation Order 2005, SI 2005/1970, as a military aircraft: art 155(1). As to the Secretary of State see PARA 33.

6 For these purposes, 'visiting force' means any such body, contingent or detachment of the forces of any country as is a visiting force for the purpose of the provisions of the Visiting Forces Act 1952 which apply to that country by virtue of s 1(1)(a), or which from time to time apply to that country by virtue of s 1(1)(b) and of any Order in Council made under s 1 designating that country for the purposes of that Act: Air Navigation Order 2005, SI 2005/1970, art 155(1).

7 For these purposes, 'international headquarters' means an international headquarters designated by Order in Council under the International Headquarters and Defence Organisations Act 1964 s 1: Air Navigation Order 2005, SI 2005/1970, art 155(1). See also **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 326.

8 Air Navigation Order 2005, SI 2005/1970, art 152(6). As to the provisions which must be complied with see PARA 359 note 6.

9 The provisions of the Civil Aviation Act 1949 s 10 (repealed: see now the Civil Aviation Act 1982 s 75; and PARA 600) were applied to all Crown aircraft, both civil and military: see the Civil Aviation Act (Application to Crown Aircraft) Order 1959, SI 1959/1309, art 2. The provisions of the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, appear to apply to all Crown civil aircraft: see reg 3;

and the Civil Aviation Act (Application to Crown Aircraft) Order 1959, SI 1959/1309, art 4. See further PARA 598 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/1. INTRODUCTION/(5) CROWN AND MILITARY AIRCRAFT/32. Claims by and against the Crown.

32. Claims by and against the Crown.

Her Majesty's aircraft¹ are immune from proceedings in rem². In the case of imminent national danger or great emergency, or for the purposes of warlike operations or other operations carried out in connection with the warlike activity of any person, the Secretary of State³ may revive certain provisions of the Crown Proceedings Act 1947 which do not otherwise apply in respect of any act or omission committed after 15 May 1987⁴. Under these provisions, no action in tort lies against the Crown or any officer of the Crown for death or personal injury suffered by a member of the armed forces of the Crown if it was suffered in consequence of the nature or condition of any aircraft being used for the time being for the purpose of the armed forces of the Crown, provided that it is certified that the death or injury otherwise qualifies for entitlement to an award⁵.

1 'Her Majesty's aircraft' does not include aircraft belonging to Her Majesty otherwise than in right of her United Kingdom government or the Scottish administration: Crown Proceedings Act 1947 s 38(2) (amended by the Scotland Act 1998 s 125, Sch 8 para 7(2)(a)).

2 See the Crown Proceedings Act 1947 s 29; and **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 179. As to excepted proceedings generally see **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103.

3 As to the Secretary of State see PARA 33.

4 See the Crown Proceedings (Armed Forces) Act 1987 ss 1, 2; and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103.

5 Crown Proceedings Act 1947 s 10(2). See further **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 103. As to the compatibility of s 10 with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1), which guarantees a right of access to a court, see *Matthews v Ministry of Defence* [2003] UKHL 4, [2003] 1 AC 1163, [2003] 1 All ER 689. As to the right of access to a court see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 141.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(i) General Powers/33. The Secretary of State.

2. ADMINISTRATION AND FINANCE

(1) THE SECRETARY OF STATE

(i) General Powers

33. The Secretary of State.

Since the advent of aircraft, a succession of governmental or quasi-governmental bodies has been responsible for civil aviation¹, but modern statutes conferring powers and duties in relation to civil aviation generally refer to the Secretary of State². In practice, civil aviation functions are now exercised by the Secretary of State for Transport³. Certain aviation functions must be exercised in collaboration with the Secretary of State for Defence⁴.

1 Initially, responsibility lay with the Home Office (see the Aerial Navigation Act 1911), later passing to the Air Ministry and the Air Council (see the Air Navigation Act 1919; and the Air Navigation Act 1920 (repealed)). The Air Council was responsible for all aerial navigation, including civil aviation, until the passing of the Air Navigation Act 1936, which transferred the civil aviation functions of the Air Council to the Secretary of State: see the Air Navigation Act 1936 s 23 (repealed). Functions were then transferred to the Minister of Civil Aviation, except for certain emergency powers: see the Ministry of Civil Aviation Act 1945 (repealed); the Civil Aviation Act 1946 (repealed); and the Civil Aviation Act 1949 (repealed). The functions that were conferred on the Minister of Civil Aviation were transferred in turn to the Minister of Transport and Civil Aviation (see the Transfer of Functions (Ministry of Civil Aviation) Order 1953, SI 1953/1204 (lapsed), which amalgamated the Ministry of Civil Aviation with the Ministry of Transport), and then to the Minister of Aviation (see the Minister of Aviation Order 1959, SI 1959/1768 (as originally made) (now lapsed), which transferred the aviation functions of the Minister of Transport and Civil Aviation to the Minister of Supply, whose title became Minister of Aviation). Certain of the Minister of Aviation's functions were transferred to the Board of Trade, and those which were not transferred were exercised concurrently by the Board of Trade and the Minister of Aviation: see the Transfer of Functions (Civil Aviation) Order 1966, SI 1966/741 (lapsed); and the Transfer of Functions (Civil Aviation) (No 2) Order 1966, SI 1966/1015 (lapsed). The functions of the Minister of Aviation were later transferred to the Minister of Technology: see the Ministry of Aviation (Dissolution) Order 1967, SI 1967/155 (lapsed). The Secretary of State for Trade and Industry Order 1970, SI 1970/1537 (lapsed), provided that the functions of the Board of Trade were to be exercisable concurrently with the Secretary of State, although in practice the functions came to be exercised by the Secretary of State alone, and the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127, directed that civil aviation functions were no longer to be exercisable by the Board of Trade. The Secretary of State for Trade and Industry Order 1970, SI 1970/1537 (lapsed), also provided for the Minister of Technology to become the Minister of Aviation Supply, but in 1971 the Ministry of Aviation Supply was dissolved and functions of the Minister of Aviation Supply were transferred to the Secretary of State by the Ministry of Aviation Supply (Dissolution) Order 1971, SI 1971/719 (lapsed).

In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. The office of Secretary of State is a unified office, and in law each Secretary of State is capable of performing the functions of all or any of them: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355. In practice, the civil aviation functions of the Secretary of State have been exercised in turn by the Secretary of State for Trade and Industry (see the Secretary of State for Trade and Industry Order 1970, SI 1970/1537 (lapsed)), the Secretary of State for Trade (see the Secretary of State (New Departments) Order 1974, SI 1974/692 (lapsed); and see also the Ministers of the Crown Act 1975), the Secretary of State for Transport (see the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127), the Secretary of State for the Environment, Transport and the Regions (see the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971), and the Secretary of State for Transport, Local Government and the Regions (see the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568). At the date at which this volume states the law, civil aviation functions are exercised by the Secretary of State for Transport. As to the transfer of property, rights and liabilities to the Secretary of State for Transport see the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 7. Certain functions were transferred to the Ministry of Defence on the dissolution of the Ministry of Aviation Supply: see the Ministry of Aviation Supply (Dissolution) Order 1971, SI 1971/719 (lapsed).

As to government departments and ministerial responsibilities see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 427 et seq. As to the transfer of functions generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 363.

2 See eg the Civil Aviation Act 1982 s 1(1); and PARA 34.

3 See note 1.

4 Thus, eg, the Secretary of State for Transport must act jointly with the Secretary of State for Defence in directing whether the regulations relating to the investigation of air accidents are to apply when both civil and military aircraft or installations are involved in an accident: see the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005, SI 2005/2693, reg 3(1); and PARA 604. As to the Secretary of State for Defence see further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 438 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(i) General Powers/34. Civil aviation functions.

34. Civil aviation functions.

The Secretary of State¹ is charged with the general duty of organising, carrying out and encouraging measures (1) for the development of civil aviation; (2) for the designing, development and production of civil aircraft; (3) for the promotion of safety and efficiency in their use; (4) for research into questions relating to air navigation; and (5) for safeguarding the health of persons on board aircraft².

The Secretary of State must exercise his air traffic services functions³ so as to maintain a high standard of safety in the provision of air traffic services⁴. He must exercise the functions in the manner he thinks best calculated (a) to further the interests of operators and owners of aircraft, owners and managers of aerodromes⁵, persons travelling in aircraft and persons with rights in property carried in them⁶; (b) to promote efficiency and economy on the part of air traffic services licence holders⁷; (c) to secure that licence holders will not find it unduly difficult to finance activities authorised by their licences⁸. He must also exercise these functions so as to impose on licence holders the minimum restrictions which are consistent with the exercise of those functions⁹.

The Secretary of State has power to give directions to the Civil Aviation Authority ('CAA')¹⁰ imposing duties or conferring powers (or both) on it with regard to air navigation¹¹.

1 As to the Secretary of State see PARA 33.

2 Civil Aviation Act 1982 s 1(1), (1A) (s 1(1A) added by the Civil Aviation Act 2006 s 8(2)). The Civil Aviation Act 1982 s 1(1) does not authorise the production of civil aircraft by the Secretary of State: s 1(2). The Industrial Expansion Act 1968 s 12, the Rolls Royce (Purchase) Act 1971 s 1(2) and the Concorde Aircraft Act 1973 s 1 (all now repealed) have, however, allowed the Secretary of State to take part in the production of civil aircraft in special circumstances.

The acquisition and disposal of aircraft, aero-engines and aviation equipment in discharge of the Secretary of State's duty under the Civil Aviation Act 1982 s 1(1) is subject to the approval of the Treasury: s 1(3). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq. As to the Secretary of State's duty with regard to public consultation, see *R (on the application of Wandsworth London Borough Council) v Secretary of State for Transport* [2005] EWHC 20 (Admin), [2006] 1 EGLR 91, [2005] All ER (D) 294 (Feb).

3 I.e. his functions under the Transport Act 2000 Pt I Ch I (ss 1-40). Section 1 does not, however, apply to the exercise of the Secretary of State's functions under s 38 (directions in the interests of national security: see PARA 43): s 1(7).

4 Transport Act 2000 s 1(1). This duty has priority over those in s 1(2)-(5) (see the text and notes 6-8): see s 1(1).

For the purposes of Pt I (ss 1-107), 'air traffic services' are services (1) providing instructions, information or advice with a view to preventing aircraft colliding with other aircraft or with other obstructions (whether in the air or on the ground) (s 98(1)(a)); (2) providing instructions, information or advice with a view to securing safe and efficient flying (s 98(1)(b)); (3) managing the flow of air traffic with a view to ensuring the most efficient use of airspace (s 98(1)(c)); (4) providing facilities for communicating with aircraft and for the navigation and surveillance of aircraft (s 98(1)(d)); (5) notifying organisations of aircraft needing search and rescue facilities, and assisting organisations to provide such facilities (s 98(1)(e)). The Secretary of State may by order amend this definition: s 98(2).

The power to make an order under s 98 is exercisable only after consultation with the Civil Aviation Authority ('CAA'): s 103(8). As to the CAA see PARA 50 et seq. A power to make an Order in Council or an order or regulations under Pt I may be exercised differently in relation to different cases or descriptions of case: s 103(1). An Order in Council or an order or regulations made under Pt I may include such supplementary, incidental, consequential or transitional provisions as the person exercising the power thinks are necessary or

expedient: s 103(2). A power to make an order or regulations under Pt I is exercisable by statutory instrument (s 103(3)) which is subject to annulment in pursuance of a resolution of either House of Parliament if the instrument contains an order or regulations made by the Secretary of State under any provision of Pt I other than s 51 (see PARA 84) or s 94 (see PARA 45) (s 103(5)). References in s 103(1), (3) to a power to make an order are references to a power of the Secretary of State; and in s 103(2) the reference to an order is a reference to an order made by the Secretary of State: s 103(4).

5 As to the meaning of 'aerodrome' see PARA 175; definition applied by the Transport Act 2000 s 40(1), (2). A 'manager of an aerodrome' is a person who is in charge of it or holds a licence granted in respect of it by virtue of the Civil Aviation Act 1982 s 60 (see PARA 353): Transport Act 2000 s 40(1), (2).

6 Transport Act 2000 s 1(2)(a). The only interests to be considered under s 1(2)(a) are interests regarding the range, availability, continuity, cost and quality of air traffic services: s 1(3). The reference in s 1(2)(a) to furthering interests includes a reference to furthering them (where the Secretary of State thinks it appropriate) by promoting competition in the provision of air traffic services: s 1(4).

If in a particular case there is a conflict in the application of the provisions of s 1(2)-(4), then, in relation to that case, the Secretary of State must apply them in the manner he thinks is reasonable having regard to them as a whole: s 1(5).

7 Transport Act 2000 s 1(2)(b). As to the meaning of 'licence', and as to the meaning of 'licence holder', see PARA 139 note 4. As to the licensing of air traffic services see PARA 139 et seq.

8 Transport Act 2000 s 1(2)(c).

9 Transport Act 2000 s 1(6).

10 As to the CAA see PARA 50 et seq.

11 See the Transport Act 2000 s 66(1); and PARAS 58-60. A person to whom a direction is given under Pt I must give effect to the direction: s 104(1). A direction under a provision of Pt I may be varied or revoked by a direction under the same provision: s 104(2). A direction under Pt I must be in writing: s 104(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(i) General Powers/35. Powers and duties under Orders in Council.

35. Powers and duties under Orders in Council.

The Secretary of State¹ is invested by the Air Navigation Order 2005² with various powers in connection with the administration and control of civil aviation. These include powers in relation to the regulation and control of all aircraft in or over the United Kingdom³ and adjacent territorial waters⁴. He prescribes the form and manner of keeping records of flight times and duty periods⁵. He also has powers in relation to (1) aerodromes⁶ and the control of noise and vibration there⁷; (2) the detention of aircraft⁸; and (3) the cancellation, suspension and variation of permission granted to aircraft which are not registered in the United Kingdom either in respect of carriage for valuable consideration⁹ or in respect of aerial photography and survey¹⁰. He may make regulations with regard to matters dealt with in the Air Navigation Order 2005¹¹.

1 As to the Secretary of State see PARA 33.

2 Ie the Air Navigation Order 2005, SI 2005/1970. As to air navigation orders see PARA 353 et seq.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 See PARA 353.

5 See PARA 464.

6 See PARAS 256, 269.

7 See PARA 259 et seq.

8 See PARA 528.

9 See **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 94.

10 See PARA 542.

11 See eg the Air Navigation Order 2005, SI 2005/1970, art 70 (carriage of dangerous goods: see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 193), arts 95, 96 (movement of aircraft: see PARA 357 et seq).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(i) General Powers/36. Power to provide aerodromes and acquire and manage land.

36. Power to provide aerodromes and acquire and manage land.

The Secretary of State¹ has power to establish and maintain aerodromes² for the purposes of civil aviation³ and to provide and maintain roads, approaches, apparatus, equipment, buildings and other accommodation in connection with such aerodromes⁴.

He may, for the purposes of his functions connected with civil aviation, acquire land by agreement or be authorised to acquire land compulsorily⁵, and he may authorise the Civil Aviation Authority to acquire land compulsorily for any purpose in connection with the performance of its functions⁶.

He has power to manage, sell, let or exchange any land vested in him⁷, and to manage and, subject to the terms of the lease, to sublet land taken on lease by him, or to assign the lease⁸.

He may, with Treasury⁹ approval, make grants or loans:

- 1 (1) in respect of any expenses incurred or to be incurred by any person (a) in investigating the need for, or for the expansion of, an aerodrome in any part of Great Britain¹⁰; (b) in establishing or expanding any such aerodrome; (c) in maintaining any such aerodrome or in providing or maintaining roads, approaches, apparatus, equipment, buildings or other accommodation¹¹; and
- 2 (2) for making good any losses incurred by any person in the operation of, or in the provision of any services at, any such aerodrome¹².

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'aerodrome' see PARA 175. There may be a need for public consultation before an aerodrome is established or expanded: see eg *R (on the application of Medway Council) v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 2516 (Admin), [2002] 49 EG 123 (CS) (where the decision of the Secretary of State to exclude proposals for Gatwick airport from a public consultation document concerning the expansion of runway capacity in the south east of England was challenged, and the claim was allowed on the grounds of irrationality and procedural unfairness).

3 The last definition of 'purposes of civil aviation' was given by the Civil Aviation Act 1949, which provided that 'purposes of civil aviation' included all purposes connected with air navigation except purposes of defence of the realm by air, and 'defence of the realm by air' included the air force and the administration of all matters relating to it: see s 63(1) (repealed).

4 Civil Aviation Act 1982 s 25(1). Four aerodromes were transferred to the British Airports Authority (now BAA plc) under the Airports Authority Act 1965 s 1 (repealed) (see further PARA 181 et seq), and nine aerodromes were transferred to the Civil Aviation Authority ('CAA') under the Civil Aviation Act 1971 s 14(1), Sch 2 (repealed) (see further PARA 187). As to the Secretary of State's powers in relation to aerodromes see PARA 186 et seq. As to the CAA see PARA 50 et seq.

5 Civil Aviation Act 1982 s 41(1). The Acquisition of Land Act 1981 (without Pt VI (ss 32-33)) has effect in the case of compulsory purchase of land in England and Wales: see the Civil Aviation Act 1982 s 41(2). See further PARA 186.

6 See the Civil Aviation Act 1982 s 42(1); and see further PARA 187.

7 Civil Aviation Act 1982 s 41(3). The power to pay or receive money for equality of exchange is included: see s 41(3). The Secretary of State's power of sale must be exercised subject, in the case of land acquired under the Defence of the Realm (Acquisition of Land) Act 1916, to the right of pre-emption given by s 5 to the original owner of the land: Civil Aviation Act 1982 s 41(3). See further **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 520.

- 8 Civil Aviation Act 1982 s 41(4).
- 9 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.
- 10 As to the meaning of 'Great Britain' see PARA 30 note 1.
- 11 Civil Aviation Act 1982 s 34(1)(a). Any such loan must be repaid to the Secretary of State at such times and by such methods, and (except where he made it free of interest) is subject to the payment of such interest, as he may with Treasury approval direct: see s 34(3).
- 12 Civil Aviation Act 1982 s 34(1)(b). See note 11.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(i) General Powers/37. Other powers in relation to land.

37. Other powers in relation to land.

The Secretary of State¹ has power, by order, to provide for the creation of easements and other rights over land in his favour, including rights to carry out and maintain works, structures and apparatus upon any specific land², in order (1) to secure that the relevant land is used safely and efficiently for the purposes of civil aviation, that appropriate services are provided in relation to that land, or that civil aircraft are navigated safely and efficiently³; (2) to prohibit or restrict the use of any area of land or water as a civil aerodrome so as to secure that aerodromes, either vested in him or under his control or owned or managed by the Civil Aviation Authority ('CAA')⁴, are safe for the arrival and departure of aircraft⁵; and (3) to declare any area of land to be subject to control, so that directions may be given to require, inter alia, the demolition of buildings or the cutting down of trees on the land or to extinguish private rights⁶. He may also exercise these powers where the land or relevant apparatus, structures or work are vested in Eurocontrol, the CAA, a relevant operator or the licensee of an aerodrome⁷.

The Secretary of State has power to authorise the proprietors of licensed aerodromes to erect warning lights and other apparatus on buildings in the vicinity of those aerodromes⁸. In certain cases he has a power to authorise persons to enter upon land for the purpose of carrying out surveys⁹. He also has power to authorise the stopping up or diversion of highways for civil aviation purposes¹⁰.

1 As to the Secretary of State see PARA 33.

2 See the Civil Aviation Act 1982 s 44(2); and PARA 191 et seq.

3 See the Civil Aviation Act 1982 s 44(1)(a)-(c); and PARA 191.

4 As to the CAA see PARA 50 et seq.

5 See the Civil Aviation Act 1982 s 45(1); and PARA 209 et seq.

6 See the Civil Aviation Act 1982 s 46(1), (2); and PARA 199 et seq.

7 See the Civil Aviation Act 1982 ss 44(2), (12), 45(1), 46(10); the Airports Act 1986 s 59(3), (4); and PARAS 191 et seq, 199 et seq, 209 et seq. As to Eurocontrol see PARA 23; and as to the licensee of an aerodrome see PARAS 226-227.

8 See the Civil Aviation Act 1982 s 47(1); and PARA 292.

9 See the Civil Aviation Act 1982 s 50(1), (2); and PARA 214.

10 See the Civil Aviation Act 1982 s 48; and PARA 205.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(i) General Powers/38. Directions relating to the environment.

38. Directions relating to the environment.

The Secretary of State¹ may give such directions as he thinks are necessary or expedient (1) to prevent or deal with noise, vibration, pollution or other disturbance attributable to aircraft used for the purpose of civil aviation; or (2) to limit or mitigate the effects of such noise, vibration, pollution or disturbance². Such directions may be given to an air traffic services licence holder³ or to air traffic services licence holders generally, or to a person who is authorised by an exemption⁴ to provide air traffic services (an 'authorised person') or to authorised persons generally⁵.

A direction may be of a general character or may require a licence holder or an authorised person to do or not to do a particular thing⁶. A direction may include provision requiring persons to have regard to guidance which relates to the environment and which the Secretary of State may issue from time to time⁷. Before giving a direction to a particular licence holder or authorised person (as opposed to licence holders or authorised persons generally) requiring him to do or not to do a particular thing, the Secretary of State must consult that licence holder or authorised person and the Civil Aviation Authority ('CAA')⁸.

1 As to the Secretary of State see PARA 33.

2 Transport Act 2000 s 39(1). In so far as a direction under s 39 conflicts with the requirements of s 38 (directions in interests of national security: see PARA 43) or s 93 (control in time of hostilities: see PARA 44) or of an order under s 94 (orders for possession of aerodromes: see PARA 45), the direction is to be disregarded: s 39(5). In so far as a direction under s 39 conflicts with the requirements of an enactment or instrument other than s 38 or s 93 or an order under s 94, the requirements are to be disregarded: s 39(6).

3 As to the meaning of 'licence holder' see PARA 139 note 4. As to the licensing of air traffic services see PARA 139 et seq. As to the meaning of 'air traffic services' see PARA 34 note 4.

4 As to the meaning of 'exemption' see PARA 139 note 2. As to exemptions see PARA 140.

5 Transport Act 2000 s 39(2).

6 Transport Act 2000 s 39(3).

7 Transport Act 2000 s 39(4).

8 Transport Act 2000 s 39(7). As to the CAA see PARA 50 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(i) General Powers/39. Power to make byelaws.

39. Power to make byelaws.

The Secretary of State¹ may make byelaws in respect of any aerodrome owned or managed by him for regulating the use and operation of the aerodrome and the conduct of all persons while within the aerodrome².

1 As to the Secretary of State see PARA 33.

2 See the Airports Act 1986 ss 63(1), 82; and PARA 322.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(i) General Powers/40. Expenses defrayed by Parliament.

40. Expenses defrayed by Parliament.

The Secretary of State's¹ salary and expenses, including any salaries or remuneration paid to his parliamentary secretaries and to the other secretaries, officers and servants appointed by him, are defrayed out of money provided by Parliament².

Any contribution payable by Her Majesty's government by way of contribution to the expenses of the International Civil Aviation Organisation ('ICAO')³ under the Chicago Convention⁴, and such expenses of any delegate or representative appointed in connection with that Convention as may be approved by the Treasury⁵, are payable out of money provided by Parliament⁶. So also are any expenses incurred by Her Majesty's government for the purpose of that part of the Convention⁷ which relates to the provision of airports and other air navigation facilities⁸.

All sums received by Her Majesty's government in repayment of expenses relating to the provision of airports and air navigation facilities under the Chicago Convention⁹ and all fees paid under an air navigation order are paid into the Consolidated Fund¹⁰.

1 As to the Secretary of State see PARA 33.

2 As to the salaries etc payable to the Secretary of State, his parliamentary secretaries and his officers and servants see further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 423-425.

3 As to ICAO see PARAS 20-22.

4 I.e. under the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) art 61. As to the Chicago Convention see PARA 2 et seq.

5 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

6 Civil Aviation Act 1982 s 61(7)(a), (b).

7 I.e. the Chicago Convention Ch XV (arts 68-76).

8 Civil Aviation Act 1982 s 61(7)(c).

9 See the Chicago Convention art 76.

10 Civil Aviation Act 1982 s 61(8). As to air navigation orders see PARA 353 et seq. As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(i) General Powers/41. Expenses in connection with the Civil Aviation Authority.

41. Expenses in connection with the Civil Aviation Authority.

The Secretary of State¹ may make grants to the Civil Aviation Authority ('CAA')², and may lend to the CAA sums issued by the Treasury³ out of the National Loans Fund⁴.

1 As to the Secretary of State see PARA 33.

2 See the Civil Aviation Act 1982 s 12(1)(a); and PARA 67. As to the CAA see PARA 50 et seq.

3 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

4 See the Civil Aviation Act 1982 s 12(2)-(4); and PARA 67. Sums received by the Secretary of State in repayment of loans must be paid into the National Loans Fund: see s 12(4). As to the National Loans Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 727 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(i) General Powers/42. Directions and functions in respect of international relations.

42. Directions and functions in respect of international relations.

After consultation with the Civil Aviation Authority ('CAA')¹, the Secretary of State² may give the CAA directions to do a particular thing which it has power to do, or to refrain from doing a particular thing, if the Secretary of State considers it appropriate to give such directions³:

- 3 (1) in the interests of national security⁴;
- 4 (2) in connection with any matter appearing to him to affect the relations of the United Kingdom⁵ with a country or territory outside the United Kingdom⁶;
- 5 (3) in order to discharge or facilitate the discharge of an obligation binding on the United Kingdom by virtue of its being a member of an international organisation or a party to an international agreement⁷;
- 6 (4) in order to attain or facilitate the attainment of any other object the attainment of which is in his opinion appropriate in view of the fact that the United Kingdom is a member of an international organisation or a party to an international agreement⁸;
- 7 (5) in order to enable the United Kingdom to become a member of an international organisation or a party to an international agreement⁹; or
- 8 (6) in order to prevent or deal with noise, vibration, pollution or other disturbance attributable to aircraft used for the purpose of civil aviation¹⁰.

The CAA takes an active part in the framing of aviation policy to be pursued by United Kingdom airlines at traffic conferences of the International Air Transport Association ('IATA')¹¹. In such matters the CAA acts as the aeronautical authority for the United Kingdom and approves or disapproves IATA tariff resolutions, and ensures the implementation of those approved. Although it is recognised that the necessary expert knowledge lies with the CAA, the Secretary of State remains responsible for international relations and, where formal negotiations with foreign governments are required, provides the United Kingdom government with all necessary advice and assistance.

1 As to the CAA see PARA 50 et seq.

2 As to the Secretary of State see PARA 33.

3 Civil Aviation Act 1982 s 6(2) (amended by the Transport Act 2000 ss 97, 274, Sch 8 Pt V para 17(1), (2), Sch 31 Pt I(3)). In so far as any directions given under the Civil Aviation Act 1982 s 6 conflict with the requirements of the Transport Act 2000 s 93 (control in time of hostilities: see PARA 44) or of an order under s 94 (orders for possession of aerodromes: see PARA 45), the directions are to be disregarded: Civil Aviation Act 1982 s 6(3) (s 6(3), (4) added by the Transport Act 2000 Sch 8 Pt V para 17(3)). In so far as any directions given under the Civil Aviation Act 1982 s 6 conflict with the requirements of any enactment or instrument relating to the CAA (other than the Transport Act 2000 s 93 or an order under s 94) the requirements are to be disregarded: Civil Aviation Act 1982 s 6(4) (as so added).

4 Civil Aviation Act 1982 s 6(2)(a). Without prejudice to s 6(2)(a), the Secretary of State may, after consultation with the CAA, give it such directions of a general character as to the performance of its functions as he thinks it appropriate to give in the interests of national security: s 6(1) (amended by the Transport Act 2000 Sch 8 Pt V para 17(2), Sch 31 Pt I(3)).

5 As to the meaning of 'United Kingdom' see PARA 30 note 1.

6 Civil Aviation Act 1982 s 6(2)(b).

- 7 Civil Aviation Act 1982 s 6(2)(c).
- 8 Civil Aviation Act 1982 s 6(2)(d).
- 9 Civil Aviation Act 1982 s 6(2)(e).
- 10 Civil Aviation Act 1982 s 6(2)(f).
- 11 As to IATA see PARA 25.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(ii) Powers relating to National Emergencies/43. Directions in interests of national security etc.

(ii) Powers relating to National Emergencies

43. Directions in interests of national security etc.

The Secretary of State¹ may give to an air traffic services licence holder² or to air traffic services licence holders generally such directions of a general character as he thinks are necessary or expedient in the interests of national security, or in the interests of encouraging or maintaining the United Kingdom's relations with another country or territory³. The Secretary of State may give to a licence holder a direction (1) requiring it to do or not to do a particular thing, if the Secretary of State thinks it necessary or expedient to give the direction in the interests of national security⁴; or (2) requiring it either to do or not to do a particular thing in connection with anything authorised by the licence, or to secure that a particular thing is done or not done in connection with anything authorised by the licence, if he thinks it necessary or expedient to give the direction in order to discharge or facilitate the discharge of an international obligation of the United Kingdom⁵. In exercising these powers, the Secretary of State must have regard to the need to maintain a high standard of safety in the provision of air traffic services⁶. Before giving a direction to a particular licence holder (as opposed to licence holders generally), the Secretary of State must consult that licence holder⁷.

The Secretary of State must send a copy of any direction to the Civil Aviation Authority ('CAA')⁸. The Secretary of State must lay before each House of Parliament a copy of any direction unless he thinks its disclosure is against the interests of national security, or the interests of the United Kingdom's relations with another country or territory, or the commercial interests of any person⁹.

A person must not disclose, and is not required by any enactment or otherwise to disclose, a direction given or other thing done by virtue of these provisions if the Secretary of State notifies him that he thinks disclosure is against the interests of national security, or the interests of the United Kingdom's relations with another country or territory, or the commercial interests of any person (other than the person notified)¹⁰.

A person commits an offence if without reasonable excuse he contravenes or fails to comply with a direction, or he makes a disclosure¹¹. A person who commits an offence is liable on summary conviction to a fine not exceeding the statutory maximum¹², or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both¹³.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'licence', and as to the meaning of 'licence holder' see PARA 139 note 4. As to the licensing of air traffic services see PARA 139 et seq. As to the meaning of 'air traffic services' see PARA 34 note 4.

3 Transport Act 2000 s 38(1). As to the meaning of 'United Kingdom' see PARA 30 note 1. As to directions see further PARA 34 note 11.

In so far as a direction under s 38 conflicts with the requirements of s 93 (see PARA 44) or of an order under s 94 (see PARA 45), the direction is to be disregarded: s 38(5). In so far as a direction under s 38 conflicts with the requirements of an enactment or instrument other than s 93 or an order under s 94, the requirements are to be disregarded: s 38(6).

4 Transport Act 2000 s 38(2).

5 Transport Act 2000 s 38(3).

6 Transport Act 2000 s 38(4). As to the meaning of 'air traffic services' see PARA 34 note 4.

7 Transport Act 2000 s 38(7).

8 Transport Act 2000 s 38(8). As to the CAA see PARA 50 et seq.

9 Transport Act 2000 s 38(9).

10 Transport Act 2000 s 38(10).

11 Transport Act 2000 s 38(11).

12 The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(b)); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. 'Prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)(c)).

13 Transport Act 2000 s 38(12).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(ii) Powers relating to National Emergencies/44. Control in time of hostilities.

44. Control in time of hostilities.

The Secretary of State¹ may (1) give directions to any listed person in any time of actual or imminent hostilities or of severe international tension or of great national emergency²; or (2) give directions to any listed person requiring him to participate in the planning of steps which might be taken in any time of actual or imminent hostilities or of severe international tension or of great national emergency³. The listed persons are (a) the Civil Aviation Authority ('CAA')⁴; (b) a person who provides air traffic services⁵; (c) a person who operates a United Kingdom air transport undertaking⁶; (d) a person who operates an airport⁷; (e) a person who owns or operates a relevant asset⁸.

The power under the head (1) above includes (i) in the case of the CAA, power to direct it to carry out its functions in a specified manner or for specified purposes⁹; (ii) in the case of a person who provides air traffic services, power to direct him to do so in a specified manner or for specified purposes¹⁰; (iii) in the case of a person who owns a relevant asset, power to direct him to permit the use of the asset or to exercise his rights over it in a specified manner or for specified purposes¹¹; (iv) in the case of a person who operates a relevant asset, power to direct him to exercise his powers of management over the asset in a specified manner or for a specified purpose¹². The power also includes power (A) to give directions designed to regulate or prohibit (absolutely or subject to conditions) the navigation of all or any descriptions of aircraft over the United Kingdom or over part of it or over any area of sea; (B) to regulate or prohibit (absolutely or subject to conditions) the use, building, maintenance or establishment of aerodromes or flying schools of any description; and (C) to secure that relevant assets are taken into the Secretary of State's possession for use by or for the purposes of the armed forces of the Crown¹³.

A person receiving a direction commits an offence if without reasonable excuse he contravenes or fails to comply with the direction¹⁴. A person (other than the CAA) who suffers direct injury or loss arising from compliance with a direction under head (1) above is entitled to receive compensation from the Secretary of State¹⁵.

1 As to the Secretary of State see PARA 33.

2 Transport Act 2000 s 93(1)(a). See note 3. A great national emergency is a natural disaster or other emergency which the Secretary of State thinks is or may be likely to give rise to such disruption of the means of transport that the population, or a substantial part of the population, of the United Kingdom is or may be likely to be deprived of essential goods or services: s 95(1)(c), (2).

3 Transport Act 2000 s 93(1)(b). As to directions see further PARA 34 note 11. In so far as a direction under s 93 conflicts with the requirements of an order under s 94 (orders for the possession of aerodrome: see PARA 45), the direction is to be disregarded: s 93(5). In so far as a direction under s 93 conflicts either with the requirements of an enactment or instrument other than an order under s 94, or with any duty which arises otherwise than under an enactment or instrument, the requirements or the duty must be disregarded: s 93(6).

4 As to the CAA see PARA 50 et seq.

5 As to the meaning of 'air traffic services' see PARA 34 note 4.

6 A United Kingdom air transport undertaking is an undertaking which appears to the Secretary of State to have its principal place of business in the United Kingdom and which includes the provision of services for the carriage by air of passengers or cargo for hire or reward: Transport Act 2000 s 95(1)(e), (5). As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 An airport is the aggregate of the land, buildings and works comprised in an aerodrome; and a person operates an airport if he manages it: Transport Act 2000 s 95(1)(b), (4). As to the meaning of 'aerodrome' see PARA 175; definition applied by s 95(1)(a), (3).

8 Transport Act 2000 s 93(2). A relevant asset is any (1) aerodrome; (2) property used in connection with the operation of an aerodrome; (3) aircraft; or (4) property used in connection with the provision of air traffic services: s 95(1)(d), (6). An owner of a relevant asset is a person (a) who owns it or has a right over or interest in it; and (b) whose consent is needed for its use by any other person: s 95(1)(d), (7). An operator of a relevant asset is a person who manages it: s 95(1)(d), (8).

9 Transport Act 2000 s 93(3)(a).

10 Transport Act 2000 s 93(3)(b).

11 Transport Act 2000 s 93(3)(c).

12 Transport Act 2000 s 93(3)(d).

13 Transport Act 2000 s 93(4).

14 Transport Act 2000 s 93(7). A person who commits an offence under s 93(7) is liable (1) on summary conviction, to a fine not exceeding the statutory maximum; (2) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: s 93(8). As to the statutory maximum see PARA 43 note 12.

15 Transport Act 2000 s 93(9). The compensation must be of an amount agreed by the person and the Secretary of State or (in default of agreement) of an amount decided by an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors: s 93(10). See generally **ARBITRATION**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/ (1) THE SECRETARY OF STATE/(ii) Powers relating to National Emergencies/45. Orders for the possession of aerodromes etc.

45. Orders for the possession of aerodromes etc.

In any time of actual or imminent hostilities or of severe international tension or of great national emergency¹, the Secretary of State² may by order provide for any aerodrome³, and any aircraft, machinery, plant, material or thing found in or on any aerodrome, to be taken into his possession and used by or for the purposes of the armed forces of the Crown⁴.

Such an order may, for the purpose of securing compliance with the provisions of the order, provide for the detention of aircraft and make such other provision as appears to the Secretary of State to be necessary or expedient for securing such detention⁵. A person must comply with such an order notwithstanding any other duty, however arising⁶. An order may, for the purpose of securing compliance with its provisions, provide for persons to be guilty of offences in such circumstances as may be specified in the order and for persons to be liable on conviction of those offences to such penalties as may be so specified⁷. Any person who suffers direct injury or loss arising from compliance with an order is entitled to receive compensation from the Secretary of State⁸.

1 As to the meaning of 'great national emergency' see PARA 44 note 2.

2 As to the Secretary of State see PARA 33.

3 As to the meaning of 'aerodrome' see PARA 175; definition applied by the Transport Act 2000 s 95(1)(a), (3).

4 Transport Act 2000 s 94(1), (2). As to orders see further PARA 34 note 4.

5 Transport Act 2000 s 94(3).

6 Transport Act 2000 s 94(4).

7 Transport Act 2000 s 94(5). The power under s 94(5) does not include power (1) to provide for offences to be triable only on indictment; (2) to authorise the imposition, on summary conviction of an offence, of any term of imprisonment or of a fine exceeding the statutory maximum; (3) to authorise the imposition, on conviction on indictment of an offence, of a term of imprisonment exceeding two years: s 94(6). As to the statutory maximum see PARA 43 note 12.

8 Transport Act 2000 s 94(7). The compensation must be of an amount agreed by the person and the Secretary of State or (in default of agreement) of an amount decided by an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors: s 94(8). See generally **ARBITRATION**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(2) FINANCIAL ASSISTANCE IN WALES/46. Financial assistance for air transport services in Wales.

(2) FINANCIAL ASSISTANCE IN WALES

46. Financial assistance for air transport services in Wales.

The Welsh Ministers¹ may give financial assistance to:

- 9 (1) persons who provide or propose to provide air transport services² which start or end at an airport in Wales; and
- 10 (2) persons who provide or propose to provide airport facilities or services at a place in Wales,

for the purpose of enabling or facilitating them to provide those services or facilities³, but only if the services or facilities would not in their view be provided without the financial assistance⁴. The Welsh Ministers may attach conditions to such financial assistance⁵.

1 The Transport (Wales) Act 2006 refers to 'the Assembly', which is defined as the National Assembly for Wales (see s 14(2)), but ministerial functions are now carried out by the Welsh Ministers (ie the First Minister and the Welsh Ministers established under the Government of Wales Act 2006 ss 46, 48): see s 45(2); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 'Air transport services' means services for the carriage by air of passengers or cargo: Transport (Wales) Act 2006 s 11(4).

3 Transport (Wales) Act 2006 s 11(1).

4 Transport (Wales) Act 2006 s 11(2).

5 Transport (Wales) Act 2006 s 11(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(3) LOCAL AUTHORITIES/47. Provision of aerodromes.

(3) LOCAL AUTHORITIES

47. Provision of aerodromes.

A local authority¹ may, with the consent of the Secretary of State² and subject to any conditions which he may impose, establish and maintain aerodromes³; it may provide and maintain roads, equipment, buildings and other accommodation in connection therewith; and it may provide facilities at aerodromes established or maintained by some other person under special arrangements made with that person⁴. The local authority may also, with the authorisation of the Secretary of State, carry on, in connection with the aerodrome which it maintains, any particular ancillary business⁵ which it would otherwise have no power to carry on⁶.

A local authority may acquire land by agreement⁷, or may be authorised by the Secretary of State to purchase land compulsorily⁸. Land, including rights in or over land adjacent to the site of an aerodrome established, or to be established, by a local authority, may be acquired for the purpose of securing that the land is not used so as to interfere with, or cause danger to, aircraft using the aerodrome⁹. These powers may be exercised by a local authority outside as well as within its area¹⁰.

A local authority may make byelaws in respect of any aerodrome owned or managed by it¹¹.

1 'Local authority', in relation to England, means a county council, the council of a district or London borough or the Common Council of the City of London: Civil Aviation Act 1982 s 105(1) (definition amended by the Local Government Act 1985 s 102, Sch 17). In relation to Wales, 'local authority' means a county council or a county borough council: Civil Aviation Act 1982 s 105(1) (definition added by the Local Government (Wales) Act 1994 s 66, Sch 18). For the purposes of the Airports Act 1986 Pt II (ss 12-28), 'local authority' means a county council, district council, London borough council or parish council, or, in relation to Wales, a county council, county borough council or community council: s 12(1); Local Government Act 1972 s 270 (definition amended by the Local Government Act 1985 s 102, Sch 16 para 8, Sch 17; and the Local Government (Wales) Act 1994 s 1(5)).

Some local authorities are sometimes described as principal councils. For the purposes of the Airports Act 1986 Pt II, 'principal council' means, in relation to England, the council of a non-metropolitan county, of a district or of a London borough and, in relation to Wales, the council of a county or of a county borough: s 12(1) (amended by the Local Government (Wales) Act 1994 s 66, Sch 16 para 77, Sch 18). See further **LOCAL GOVERNMENT** vol 69 (2009) PARA 23.

2 As to the Secretary of State see PARA 33.

3 As to the meaning of 'aerodrome' see PARA 175. As to the circumstances under which a principal council may be directed by the Secretary of State to transfer its airport undertaking to a public airport company under its control see PARAS 48, 183.

4 Civil Aviation Act 1982 s 30(1), (2). The local authority is not authorised to execute any works on, over or under tidal lands below high-water mark or ordinary spring tides, except in accordance with plans and sections previously approved in writing by the Secretary of State and subject to such conditions as he may impose: s 30(3).

5 'Ancillary business' means any business which appears to the Secretary of State to be ancillary to the maintaining of an aerodrome: Civil Aviation Act 1982 s 31(2).

6 See the Civil Aviation Act 1982 s 31(1). The power may be granted subject to such conditions as the Secretary of State may think fit: s 31(1).

7 See the Civil Aviation Act 1982 s 30(4). The provisions of the Compulsory Purchase Act 1965 Pt I (ss 1-32) (except ss 4-8, s 10, s 31) apply to such acquisition: Civil Aviation Act 1982 s 30(8).

8 Civil Aviation Act 1982 s 30(4). The Acquisition of Land Act 1981 applies: see the Civil Aviation Act 1982 s 30(5). See generally **COMPULSORY ACQUISITION OF LAND**.

9 Civil Aviation Act 1982 s 30(6).

10 Civil Aviation Act 1982 s 30(7). As to local authorities' rights over land generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 508 et seq.

11 See the Airports Act 1986 s 63; and PARA 39.

UPDATE

47 Provision of aerodromes

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(3) LOCAL AUTHORITIES/48. Public airport companies.

48. Public airport companies.

In certain circumstances, the Secretary of State¹ may direct a principal council² which controls an airport to form a company to operate that airport as a commercial undertaking³. In pursuance of the direction, the principal council must prepare a scheme transferring property, rights and liabilities to the airport company and submit it to the Secretary of State for approval⁴.

A local authority, with the consent of the Secretary of State, may invest in any public airport company not under its control⁵.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'principal council' see PARA 47 note 1.

3 See the Airports Act 1986 ss 13, 14; and PARAS 183-184, 228.

4 See the Airports Act 1986 s 15; and PARA 183.

5 See the Airports Act 1986 s 20(3); and PARA 185. The consent of the Secretary of State for a local authority to invest in a public airport company does not replace the consent needed by a local authority to establish and maintain an aerodrome under the Civil Aviation Act 1982 s 30(1) (see PARA 47): see the Airports Act 1986 s 20(4).

As to the power for a local authority to make loans to a public airport company where the company is a subsidiary of two or more councils (a composite authority) and the local authority is one of those councils, albeit not the majority shareholder, see *R v Bolton Borough Council, ex p Manchester City Council* (1991) 89 LGR 764 (affd 89 LGR 1005, CA); and PARAS 183-185.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(3) LOCAL AUTHORITIES/49. Other functions of local authorities.

49. Other functions of local authorities.

The duty of enforcing and executing regulations made by the Secretary of State¹ in relation to sanitary control at aerodromes falls in most cases upon local authorities².

The Secretary of State and any other person having the management of an aerodrome are required to provide facilities for consultation with local authorities affected by that aerodrome³; the Secretary of State is also required to consult with the local authorities affected before making any order declaring land to be subject to control in the interests of civil aviation⁴.

Local land charges and certain orders made by the Secretary of State in relation to land must be registered in the register of local land charges maintained by the local authority in whose area the land lies⁵.

Local authorities are involved, as planning authorities, where any person wishes to establish, maintain or develop an aerodrome⁶.

1 As to the Secretary of State see PARA 33.

2 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 4 (amended by SI 2007/1447). See also the Civil Aviation Act 1982 s 36; and PARA 318.

3 See the Civil Aviation Act 1982 ss 26, 35; and PARAS 251, 253. See also the Aerodromes (Designation) (Facilities for Consultation) Order 1996, SI 1996/1392 (amended by SI 2002/2421), made under the Civil Aviation Act 1982 s 35; and PARA 253.

4 See the Civil Aviation Act 1982 s 46(5); and PARA 200.

5 See the Civil Aviation Act 1982 s 55(1); and PARA 223.

6 See **TOWN AND COUNTRY PLANNING**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(i) Constitution and Functions Generally/50. Constitution.

(4) THE CIVIL AVIATION AUTHORITY

(i) Constitution and Functions Generally

50. Constitution.

In 1971, a new administrative system was set up which provided for the creation of an authority responsible for the economic, technological and operational regulation of the civil air transport industry¹.

The Civil Aviation Authority ('CAA') consists of not less than six nor more than 16 members including the chairman and one or two deputy chairmen, all of whom are appointed by the Secretary of State². Appointment and tenure of office, remuneration³, meetings, proceedings and appointment of staff are regulated by statute⁴.

The CAA is a body corporate⁵. It is not to be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown, and it is not exempt from any tax, duty, rate, levy or any other charge; nor is its property to be regarded as property of, or held on behalf of, the Crown⁶. The CAA is a tribunal under the supervision of the Administrative Justice and Tribunals Council⁷.

The Secretary of State may make regulations for regulating the conduct of the CAA⁸.

1 See the Civil Aviation Act 1971 (now replaced by the Civil Aviation Act 1982). See also the Report of the Committee of Inquiry into Civil Air Transport (the 'Edwards Report') *British Air Transport in the Seventies* (Cmnd 4018) (1969).

2 Civil Aviation Act 1982 s 2(2) (amended by the Airports Act 1986 s 72). As to the Secretary of State see PARA 33.

3 Remuneration is determined by the Secretary of State with the consent of the Treasury: Civil Aviation Act 1982 s 2(3), Sch 1 para 6. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

4 See the Civil Aviation Act 1982 Sch 1 paras 1-18.

5 Civil Aviation Act 1982 s 2(1).

6 Civil Aviation Act 1982 s 2(4). However, the CAA must act on behalf of the Crown when performing functions under an air navigation order which falls to be performed by the Crown in pursuance of the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) (the Chicago Convention) or under an Order in Council when such functions appear to Her Majesty to relate to the exercise of powers or the discharge of obligations of the United Kingdom under an international agreement: Civil Aviation Act 1982 s 20(2). As to air navigation orders see PARA 353 et seq. As to the Chicago Convention see PARA 2 et seq.

7 As to the Administrative Justice and Tribunals Council see **ADMINISTRATIVE LAW**. The Tribunals and Inquiries Act 1992 has effect for the purposes of certain functions of the CAA as it is a tribunal specified in Sch 1 Pt I: see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 57. The functions concerned are those prescribed for the purposes of the Civil Aviation Act 1982 s 7(2): see the text and note 8.

8 Civil Aviation Act 1982 s 7(2). Such regulations may provide for regulating the conduct of the CAA and other persons, including the procedure to be followed by them, in connection with the performance by the CAA of such of its functions as may be prescribed for these purposes: s 7(2). Such regulations may include provision (1) requiring or entitling the CAA, notwithstanding any rule of law, to withhold from any person (the 'prospective

recipient') information which is furnished to the CAA by another person in connection with any function so prescribed and which in the opinion of the CAA relates to the commercial or financial affairs of the other person and cannot be disclosed to the prospective recipient without disadvantage to the other person which, by comparison with the advantage to the public and the prospective recipient of its disclosure to him, is unwarranted; (2) for the imposition on summary conviction of a fine of an amount not exceeding level 3 on the standard scale or not exceeding a lesser amount for any contravention of the regulations: s 7(2)(a), (b) (amended by virtue of the Criminal Justice Act 1982 ss 37, 40, 46). See the Civil Aviation Authority Regulations 1991, SI 1991/1672 (amended by SI 1996/1494; SI 2001/2448; and SI 2007/3556); the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054 (amended by SI 1997/2912); and the Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556.

'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 144.

UPDATE

50 Constitution

NOTE 8--SI 1991/1672 further amended: SI 2008/2683.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(i) Constitution and Functions Generally/51. General powers and functions.

51. General powers and functions.

The Civil Aviation Authority ('CAA') has power to provide for the licensing of air transport and the licensing of the provision of accommodation in aircraft, for air navigation services, for the operation of aerodromes and for assistance and information generally¹. The CAA has a duty to regulate the use of airports and to ensure their economic viability². The CAA also has functions concerning the registration of aircraft, the safety of air navigation and aircraft (including airworthiness), the health of persons on board aircraft, the control of air traffic, the certification of operators of aircraft, and the licensing of aircrews and aerodromes³. Other general functions are conferred on the CAA by the Civil Aviation Act 1982 and may be conferred on it by other enactments⁴. The CAA may do anything which is calculated to facilitate or is conducive or incidental to the performance of its functions, and for the same purpose may do elsewhere than in the United Kingdom⁵ such things as it considers appropriate⁶.

Although the CAA may delegate a great number of its functions, certain functions may not be performed on its behalf by any other person⁷.

The Civil Aviation Authority is the national supervisory authority for the purpose of performing tasks under the EU legislation relating to the single European sky⁸.

1 Civil Aviation Act 1982 s 3(b). These functions are conferred on the CAA by or under Pt II (ss 25-59). As to licensing see PARAS 92-138; as to air navigation services see PARA 23 et seq; and as to aerodromes see PARA 175 et seq. As to the constitution of the CAA see PARA 50.

2 See the Airports Act 1986 Pts III, IV (ss 29-56); and PARA 228 et seq.

3 Civil Aviation Act 1982 s 3(c) (amended by the Civil Aviation Act 2006 s 8(1), (3)). These functions are conferred on the CAA by or under air navigation orders. As to air navigation orders see PARA 353 et seq. As to health matters see PARAS 180, 318-319. As to aircraft registration see PARAS 367-374; as to certification and safety see PARA 376 et seq; as to air traffic control see PARA 546 et seq; as to aircraft operators and crew see PARA 437 et seq; and as to the licensing of aerodromes see PARAS 226-227.

4 Civil Aviation Act 1982 s 3(a), (d). Nothing in the Civil Aviation Act 1982 is to be construed as derogating from any power exercisable by virtue of any enactment whatsoever (including an enactment contained in the Civil Aviation Act 1982) to make an Order in Council or other instrument conferring a function on the CAA: s 3.

5 As to the meaning of 'United Kingdom' see PARA 30 note 1.

6 See the Civil Aviation Act 1982 s 20(1). However, these wide powers are limited in matters concerned with the formation or acquisition of a body corporate or the loan of money to or entry into a guarantee for the benefit of a body corporate, for which the consent of the Secretary of State is required: s 20(1)(b).

7 See the Civil Aviation Act 1982 s 7(1); and the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 15 (amended by SI 1992/2992) (which provides for a special quorum when the CAA is exercising non-delegable functions).

8 The European Parliament and EC Council Regulations 549/2004 (OJ L96, 31.3.2004, p 1), 550/2004 (OJ L96, 31.3.2004, p 10), 551/2004 (OJ L96, 31.3.2004, p 20), and 552/2004 (OJ L96, 31.3.2004, p 26): see the Single European Sky (National Supervisory Authority) Regulations 2004, SI 2004/1958; Single European Sky (Functions of the National Supervisory Authority) Regulations 2006, SI 2006/3104. See PARA 19.

UPDATE

51 General powers and functions

NOTE 8--Regulations 549/2004, 550/2004, 551/2004, and 552/2004 amended: see PARA 28.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(i) Constitution and Functions Generally/52. General objectives.

52. General objectives.

It is the duty of the Civil Aviation Authority ('CAA')¹ to perform its functions in the manner it considers best calculated (1) to secure that British airlines² provide air transport services which satisfy all substantial categories of public demand (so far as British airlines may reasonably be expected to provide such services), at the lowest charges consistent with a high standard of safety in operating the services, with an economic return to efficient operators on the sums invested in providing those services, and with securing the sound development of the United Kingdom civil air transport industry³; and (2) to further the reasonable interests of users of air transport services⁴. This duty⁵ does not apply in relation to anything done by the CAA in the performance of certain functions which are concurrent functions⁶ of the CAA and the Office of Fair Trading⁷. However, when performing such a function the CAA may have regard to any matter in respect of which the duty is imposed by the Civil Aviation Act 1982⁸ if it is a matter to which the Office of Fair Trading could have regard when performing that function⁹.

The CAA must exercise its functions under the Transport Act 2000¹⁰ so as to maintain a high standard of safety in the provision of air traffic services¹¹. The CAA must exercise those functions in the manner it thinks best calculated (a) to further the interests of operators and owners of aircraft, owners and managers of aerodromes¹², persons travelling in aircraft and persons with rights in property carried in them¹³; (b) to promote efficiency and economy on the part of air traffic services licence holders¹⁴; (c) to secure that licence holders will not find it unduly difficult to finance activities authorised by their licences¹⁵; (d) to take account of any international obligations of the United Kingdom notified to the CAA by the Secretary of State (whatever the time or purpose of the notification)¹⁶; (e) to take account of any guidance on environmental objectives given to the CAA by the Secretary of State after 1 February 2001¹⁷. The CAA must also exercise the functions so as to impose on licence holders the minimum restrictions which are consistent with the exercise of those functions¹⁸.

1 As to the constitution of the CAA see PARA 50.

2 'British airline' means an undertaking having power to provide air transport services and appearing to the CAA to have its principal place of business in the United Kingdom, the Channel Islands or the Isle of Man, and to be controlled by persons who are either United Kingdom nationals or are for the time being approved by the Secretary of State for these purposes: Civil Aviation Act 1982 s 4(2). 'Air transport service' means a service for the carriage by air of passengers or cargo, and 'cargo' includes mail: s 105(1). As to the meaning of 'United Kingdom' see PARA 30 note 1. 'United Kingdom national' means an individual who is (1) a British citizen, a British overseas territories citizen, a British national (overseas) or a British overseas citizen; (2) a British subject under the British Nationality Act 1981; or (3) a British protected person within the meaning of that Act: Civil Aviation Act 1982 s 105(1) (definition amended by SI 1986/948; and by virtue of the British Overseas Territories Act 2002 s 2(3)). As to British citizens see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 23-43. As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57. As to British national (overseas) status see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 63-65. As to British overseas citizens see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 58-62. As to British subjects see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 9, 66-71. As to British protected persons see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 10, 72-76. As to the Secretary of State see PARA 33.

3 Civil Aviation Act 1982 s 4(1)(a).

4 Civil Aviation Act 1982 s 4(1)(b).

5 Ie under the Civil Aviation Act 1982 s 4(1): see the text to notes 1-4.

6 le functions mentioned in the Transport Act 2000 s 86(3): see PARA 173.

7 Civil Aviation Act 1982 s 4(3) (added by the Transport Act 2000 s 97, Sch 8 para 13; and amended by the Enterprise Act 2002 s 278(1), Sch 25 para 11). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

8 le under the Civil Aviation Act 1982 s 4(1): see the text to notes 1-4.

9 Civil Aviation Act 1982 s 4(4) (added by the Transport Act 2000 Sch 8 para 13; and amended by the Enterprise Act 2002 Sch 25 para 11).

10 le under the Civil Aviation Act 1982 Pt I Ch I (ss 1-40). The provisions of the Civil Aviation Act 1982 s 4 (see the text and notes 1-9) do not apply in relation to the performance by the CAA of its functions under the Transport Act 2000 Pt I Ch I: s 2(7).

11 Transport Act 2000 s 2(1). As to the meaning of 'air traffic services' see PARA 34 note 4. The duty set out in s 2(1) has priority over those in s 2(2)-(5) (see the text and notes 13-17): s 2(1).

12 As to the meaning of 'aerodrome' see PARA 175; definition applied by the Transport Act 2000 s 40(1), (2). As to the meaning of 'manager of an aerodrome' see PARA 34 note 5.

13 Transport Act 2000 s 2(2)(a). The only interests to be considered under s 2(2)(a) are interests regarding the range, availability, continuity, cost and quality of air traffic services: s 2(3). The reference in s 2(2)(a) to furthering interests includes a reference to furthering them (where the CAA thinks it appropriate) by promoting competition in the provision of air traffic services: s 2(4). If in a particular case there is a conflict in the application of the provisions of s 2(2)-(4), in relation to that case the CAA must apply them in the manner it thinks is reasonable having regard to them as a whole: s 2(5).

14 Transport Act 2000 s 2(2)(b). As to the meaning of 'licence', and as to the meaning of 'licence holder', see PARA 139 note 4.

15 Transport Act 2000 s 2(2)(c).

16 Transport Act 2000 s 2(2)(d).

17 Transport Act 2000 s 2(2)(e). The date mentioned in the text is the date that the majority of the provisions of the Transport Act 2000 came into force: see the Transport Act 2000 (Commencement No 3) Order 2001, SI 2001/57.

18 Transport Act 2000 s 2(6).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(i) Constitution and Functions Generally/53. Directions by the Secretary of State.

53. Directions by the Secretary of State.

The Secretary of State¹ has power to give directions to the Civil Aviation Authority ('CAA')² imposing duties or conferring powers (or both) on it with regard to air navigation³, and may give directions indicating considerations to which the CAA is to have particular regard in deciding whether and how to exercise its functions under Part I of the Transport Act 2000⁴.

The Secretary of State may also, after consultation with the CAA, give it directions of a general character as to the performance of its functions in the interests of national security⁵.

The Secretary of State also has power to give the CAA directions:

- 11 (1) as to its financial functions⁶;
- 12 (2) in time of war or national emergency⁷;
- 13 (3) to meet obligations of the United Kingdom⁸;
- 14 (4) in certain matters concerning the regulation of civil aviation⁹; and
- 15 (5) in matters concerning the protection of the environment¹⁰.

1 As to the Secretary of State see PARA 33.

2 As to the constitution of the CAA see PARA 50.

3 See the Transport Act 2000 s 66(1); and PARAS 58-60.

4 Transport Act 2000 s 92. The text refers to Pt I (ss 1-107). As to directions see further PARA 34 note 11. In so far as any directions given under the Civil Aviation Act 1982 s 6 (see the text and note 5; and PARA 42) conflict with the requirements of the Transport Act 2000 s 93 (control in time of hostilities: see PARA 44) or of an order under s 94 (orders for possession of aerodromes: see PARA 45), the directions are to be disregarded: Civil Aviation Act 1982 s 6(3) (s 6(3), (4) added by the Transport Act 2000 s 97, Sch 8 Pt V para 17(1), (3)). In so far as any directions given under the Civil Aviation Act 1982 s 6 conflict with the requirements of any enactment or instrument relating to the CAA (other than the Transport Act 2000 s 93 or an order under s 94) the requirements are to be disregarded: Civil Aviation Act 1982 s 6(4) (as so added).

5 See the Civil Aviation Act 1982 s 6(1), (2)(a); and PARA 42. The CAA has a duty to comply with any direction given by the Secretary of State in pursuance of any provision of the Civil Aviation Act 1982: s 20(3). Directions given in pursuance of s 6 must be set out in the CAA's annual report to the Secretary of State: see s 21(2)(a); and PARA 74. Provision may be made by regulations made by the Secretary of State as to the mode of giving evidence of (1) any instrument made by the CAA; and (2) the publication by the CAA of any matter: s 20(4).

6 See the Civil Aviation Act 1982 ss 8(4), 12(1)(b), 13, 15(1)(b); and PARAS 64-72.

7 See the Transport Act 2000 s 93; and PARA 44.

8 See the Civil Aviation Act 1982 s 6(2)(b)-(e); and PARA 42. See also note 5.

9 Eg health control (see the Civil Aviation Act 1982 s 36(1)) and air transport licensing (see ss 66(3), 67(3), (5); and PARA 116 et seq).

10 See the Civil Aviation Act 1982 s 6(2)(f) (noise, vibration, pollution or other disturbance caused by civil aircraft); and PARA 396 et seq. See also note 5.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(i) Constitution and Functions Generally/54. General duty to provide assistance.

54. General duty to provide assistance.

The Civil Aviation Authority ('CAA')¹ is under a duty to provide the Secretary of State² or any other person specified by him with such assistance and advice as he may require in connection with any of his functions relating to civil aviation³. Thus the CAA may advise the Secretary of State before the latter directs any aircraft operator to modify or alter his aircraft in order to protect them against acts of violence⁴; the CAA may make recommendations to the Secretary of State concerning aerodromes generally⁵ and airport capacity in particular⁶; and may provide technical assistance and advice⁷. The CAA is entitled to recover from the Secretary of State a sum equal to any expense reasonably incurred in providing assistance or advice⁸.

1 As to the constitution of the CAA see PARA 50.

2 As to the Secretary of State see PARA 33.

3 Civil Aviation Act 1982 s 16(1). A requirement imposed under s 16(1) to provide advice and assistance in connection with any function may be expressed so as to operate as a continuing requirement on the CAA to provide advice and assistance in connection with that function: s 16(1A) (added by the Civil Aviation Act 2006 s 8(1), (4)(a)). The CAA may refuse to provide assistance or advice for a person other than the Secretary of State if the Secretary of State does not undertake to pay for it, unless that person pays such charge as is provided for or, if no charge is provided for, such reasonable charge as the CAA determines (Civil Aviation Act 1982 s 16(3)), but this does not apply in relation to advice or assistance given in connection with the Secretary of State's function under s 1(1A) (see PARA 34) (s 16(4A) (added by the Civil Aviation Act 2006 s 8(4)(b))).

4 See the Aviation Security Act 1982 ss 12(3), 15(3); and PARA 331.

5 See the Civil Aviation Act 1982 s 16(2). See further PARA 175 et seq.

6 See the Airports Act 1986 s 69; and PARA 274.

7 Civil Aviation Act 1982 s 16(5).

8 Civil Aviation Act 1982 s 16(4). This does not apply in relation to advice or assistance given in connection with the Secretary of State's function under s 1(1A) (see PARA 34): s 16(4A) (as added: see note 3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(ii) Air Navigation Functions/55. Civil Aviation Authority's functions in relation to air navigation.

(ii) Air Navigation Functions

55. Civil Aviation Authority's functions in relation to air navigation.

The Civil Aviation Authority ('CAA')¹ must perform such functions in respect of air navigation services² and the control of air navigation as are provided for by statute or regulations³. These functions are now largely governed by the Transport Act 2000⁴.

1 As to the constitution of the CAA see PARA 50.

2 'Air navigation services' includes information, directions and other facilities furnished, issued or provided in connection with the navigation or movement of aircraft and includes the control of movement of vehicles in any part of an aerodrome used for the movement of aircraft: Civil Aviation Act 1982 s 105(1). As to the meaning of 'aerodrome' see PARA 175.

3 See the Civil Aviation Act 1982 s 3(b); and PARA 51.

4 See the Transport Act 2000 Pt I Ch III (ss 66-72); and PARA 56 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(ii) Air Navigation Functions/56. Civil Aviation Authority's general duty in exercising air navigation functions.

56. Civil Aviation Authority's general duty in exercising air navigation functions.

The Civil Aviation Authority ('CAA')¹ has a duty to exercise its air navigation functions² so as to maintain a high standard of safety in the provision of air traffic services³. The CAA must exercise its air navigation functions in the manner it thinks best calculated⁴:

- 16 (1) to secure the most efficient use of airspace consistent with the safe operation of aircraft and the expeditious flow of air traffic⁵;
- 17 (2) to satisfy the requirements of operators and owners of all classes of aircraft⁶;
- 18 (3) to take account of the interests of any person (other than an operator or owner of an aircraft) in relation to the use of any particular airspace or the use of airspace generally⁷;
- 19 (4) to take account of any guidance on environmental objectives given to the CAA by the Secretary of State⁸;
- 20 (5) to facilitate the integrated operation of air traffic services provided by or on behalf of the armed forces of the Crown and other air traffic services⁹;
- 21 (6) to take account of the interests of national security¹⁰; and
- 22 (7) to take account of any international obligations of the United Kingdom¹¹ notified to the CAA by the Secretary of State (whatever the time or purpose of the notification)¹².

The CAA must also exercise its air navigation functions so as to impose on providers of air traffic services the minimum restrictions which are consistent with the exercise of those functions¹³. The statutory provision relating to the CAA's general objectives¹⁴ does not apply in relation to the performance by the CAA of its air navigation functions¹⁵.

Subject to the provisions described above¹⁶, the CAA must perform its air navigation functions in the manner it thinks best calculated to take into account (a) the guidance given by the Secretary of State on the government's policies both on sustainable development and on reducing, controlling and mitigating the impacts of civil aviation on the environment, and the planning policy guidance it has given to local planning authorities; (b) the need to reduce, control and mitigate as far as possible the environmental impacts of civil aircraft operations, and in particular the annoyance and disturbance caused to the general public arising from aircraft noise and vibration, and emissions from aircraft engines; (c) at the local, national and international levels, the need for environmental impacts to be considered from the earliest possible stages of planning and designing, and revising, airspace procedures and arrangements; and (d) the requirements of directions relating to the environment¹⁷ given to licence holders, a particular authorised person or authorised persons generally¹⁸.

1 As to the constitution of the CAA see PARA 50.

2 As to the CAA's air navigation functions see PARA 58.

3 Transport Act 2000 s 70(1). As to the meaning of 'air traffic services' see PARA 34 note 4. This duty has priority over those in s 70(2), (3) (see the text to notes 4-12): s 70(1).

4 Transport Act 2000 s 70(2). If in a particular case there is a conflict in the application of the provisions of s 70(2) (see heads (1)-(7) in the text), in relation to that case the CAA must apply them in the manner it thinks is reasonable having regard to them as a whole: s 70(3).

- 5 Transport Act 2000 s 70(2)(a).
- 6 Transport Act 2000 s 70(2)(b).
- 7 Transport Act 2000 s 70(2)(c).
- 8 Transport Act 2000 s 70(2)(d). As to the Secretary of State see PARA 33. This provision refers to guidance given after 1 February 2001 (ie the date on which s 70 came into force: see the Transport Act 2000 (Commencement No 3) Order 2001, SI 2001/57, art (1), Sch 2 Pt I).
- 9 Transport Act 2000 s 70(2)(e).
- 10 Transport Act 2000 s 70(2)(f).
- 11 As to the meaning of 'United Kingdom' see PARA 30 note 1.
- 12 Transport Act 2000 s 70(2)(g).
- 13 Transport Act 2000 s 70(4).
- 14 Ie the Civil Aviation Act 1982 s 4: see PARA 52.
- 15 Transport Act 2000 s 70(5).
- 16 Ie the Transport Act 2000 s 70: see the text and notes 1-15.
- 17 Ie directions given under the Transport Act 2000 s 39: see PARA 38.
- 18 Civil Aviation Authority (Air Navigation) Directions 2001 (CAA's Official Record Series 7, No 1) PARA 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(ii) Air Navigation Functions/57. National security.

57. National security.

The Secretary of State¹ may nominate a member of the Civil Aviation Authority ('CAA')² as the national security nominee³. If there is a difference of opinion between the national security nominee and the CAA which relates to the CAA's air navigation functions⁴, and the national security nominee thinks that if the CAA's opinion prevailed it could have an effect contrary to the interests of national security, then the CAA must refer the matter to the Secretary of State; and, after consulting the CAA, the Secretary of State may give it such directions regarding the matter as he thinks fit⁵.

1 As to the Secretary of State see PARA 33.

2 As to the constitution of the CAA see PARA 50.

3 See the Transport Act 2000 s 67(1). The national security nominee may authorise a member or employee of the CAA to perform on his behalf the functions which he is to perform by virtue of s 67; and while such an authorisation is effective references in s 67(2) (see the text to notes 4-5) to the national security nominee are to the person so authorised: s 67(4).

4 As to the CAA's air navigation functions see PARA 58.

5 Transport Act 2000 s 67(2), (3). As to directions see further PARA 34 note 11.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(ii) Air Navigation Functions/58. Power of the Secretary of State to give directions as to the Civil Aviation Authority's powers and duties.

58. Power of the Secretary of State to give directions as to the Civil Aviation Authority's powers and duties.

The Secretary of State¹ may give directions to the Civil Aviation Authority ('CAA')² imposing duties or conferring powers (or both) on it with regard to air navigation in a managed area³. No action is to lie in respect of a failure by the CAA to perform a duty imposed on it by such a direction; but that does not affect a right of action in respect of an act or omission which takes place in the course of performing the CAA's air navigation functions⁴. The Secretary of State may nominate a member of the CAA⁵, and a person so nominated must perform on the CAA's behalf such of its air navigation functions as the Secretary of State may specify⁶.

1 As to the Secretary of State see PARA 33.

2 As to the constitution of the CAA see PARA 50.

3 Transport Act 2000 s 66(1). The managed areas are (1) the United Kingdom; (2) any area which is outside the United Kingdom but in respect of which the United Kingdom has undertaken under international arrangements to carry out activities with regard to air navigation: s 72(1), (3). As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the directions given under s 66(1) see PARAS 59-60. As to directions see further PARA 34 note 11.

4 Transport Act 2000 s 66(2). The CAA's air navigation functions are the functions which it is to perform in pursuance of directions under s 66(1): s 72(1), (2).

5 As to the purposes of the Transport Act 2000 s 66.

6 Transport Act 2000 s 66(3). See further PARAS 61-62. A person nominated under s 66(3) may authorise a member or employee of the CAA to perform on his behalf the functions which he is to perform by virtue of s 66(3): s 66(5). The Civil Aviation Act 1982 s 7(1) (Secretary of State's power to prescribe functions not to be performed by a person on CAA's behalf: see PARA 51) and Sch 1 para 15 (CAA's power to authorise a person to perform functions on its behalf: see PARA 50) do not apply to the CAA's air navigation functions: Transport Act 2000 s 66(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(ii) Air Navigation Functions/59. Directions that may be given.

59. Directions that may be given.

The directions given by the Secretary of State¹ imposing duties or conferring powers (or both) on the Civil Aviation Authority ('CAA')² with regard to air navigation in a managed area³ may include provision as to the manner in which the CAA is to exercise its air navigation functions⁴. The provision may include requirements for:

- 23 (1) consultation with specified persons or specified descriptions of persons in relation to specified matters⁵;
- 24 (2) the CAA to seek the approval of the Secretary of State in relation to specified matters⁶; or
- 25 (3) the CAA in specified circumstances to refer specified matters to the Secretary of State⁷.

If a matter is referred to the Secretary of State by virtue of head (2) or head (3) above, he may give such directions to the CAA as he thinks fit⁸.

In so far as a direction⁹ conflicts with requirements relating to control in time of hostilities¹⁰ or an order for the possession of an aerodrome¹¹, the direction is to be disregarded¹². In so far as a direction¹³ conflicts with the requirements of any other enactment or instrument¹⁴, the requirements are to be disregarded¹⁵.

If a direction is given imposing duties or conferring powers (or both) on the CAA with regard to air navigation in a managed area¹⁶, the CAA must publish the direction in such manner as may be specified in regulations made by the Secretary of State¹⁷ and must set out the direction in the report¹⁸ for the accounting year in which the direction is given¹⁹. If certain other directions are given²⁰, the CAA must set out the direction in the report for the accounting year in which the direction is given, but must exclude a direction or part of a direction as to which the Secretary of State notifies the CAA that in his opinion it is against the national interest to set it out in the report²¹.

1 As to the Secretary of State see PARA 33.

2 As to the constitution of the CAA see PARA 50.

3 I.e. under the Transport Act 2000 s 66(1): see PARA 58. As to the managed areas see PARA 58 note 3.

4 Transport Act 2000 s 68(1). As to the CAA's air navigation functions see PARA 58.

5 Transport Act 2000 s 68(2)(a).

6 Transport Act 2000 s 68(2)(b).

7 Transport Act 2000 s 68(2)(c).

8 Transport Act 2000 s 68(3).

9 I.e. a direction under the Transport Act 2000 s 66(1) (see PARA 58), s 67(3) (see PARA 57) or s 68(3) (see the text to note 8).

10 I.e. the requirements of the Transport Act 2000 s 93: see PARA 44.

- 11 le an order under the Transport Act 2000 s 94: see PARA 45.
- 12 Transport Act 2000 s 69(1).
- 13 See note 9.
- 14 le other than the Transport Act 2000 s 93 (see PARA 44) or s 94 (see PARA 45).
- 15 Transport Act 2000 s 69(2).
- 16 le under Transport Act 2000 s 66(1): see PARA 58.
- 17 Directions must be published in the Official Record of the CAA: Civil Aviation (Publication of Directions) Regulations 2001, SI 2001/353, reg 2.
- 18 le the report made under the Civil Aviation Act 1982 s 21: see PARA 74.
- 19 Transport Act 2000 s 69(3).
- 20 le under the Transport Act 2000 s 67(3) (see PARA 57) or s 68(3) (see the text to note 8).
- 21 Transport Act 2000 s 69(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(ii) Air Navigation Functions/60. Directions that have been given.

60. Directions that have been given.

Directions have been given by the Secretary of State¹ in respect of the duties and powers of the Civil Aviation Authority ('CAA')² with regard to air navigation in a managed area³. The directions specify that it is the duty of the CAA to develop, promulgate, monitor and enforce a policy for the sustainable use of UK airspace⁴ and for the provision of necessary supporting structure for air navigation⁵. In particular, the CAA must:

- 26 (1) provide or procure the provision of such advice as the Secretary of State may reasonably require⁶;
- 27 (2) discharge the responsibility of the UK Meteorological Authority in accordance with ICAO Annex III⁷ and other international obligations and, subject to those obligations, in such a manner as the CAA may determine from time to time⁸;
- 28 (3) be responsible for the form and content of the UK Aeronautical Information Publication and ensure that an Aeronautical Information Service is provided in accordance with international obligations and any additional requirement the CAA may determine from time to time⁹;
- 29 (4) determine and procure the provision of a lower airspace radar service in UK airspace¹⁰;
- 30 (5) prepare and maintain a co-ordinated strategy and plan for the use of UK airspace for air navigation¹¹;
- 31 (6) develop national policy for the classification of UK airspace, including design criteria, rules, guidelines and common procedures¹²;
- 32 (7) classify UK airspace in accordance with such national policy, keep that classification under review and make modifications as necessary¹³;
- 33 (8) co-ordinate, determine and promulgate temporary changes in the utilisation of UK airspace to meet special air navigation requirements¹⁴;
- 34 (9) provide support for the analysis and categorisation of pilot and controller reported risk-bearing occurrences¹⁵;
- 35 (10) develop, monitor and enforce national policy for the use and assignment of civil aeronautical radio frequencies and secondary surveillance radar codes¹⁶; and
- 36 (11) contribute to the development of, and provide such assistance as the Secretary of State may request in relation to, international air navigation¹⁷.

The CAA also has an obligation to establish and operate consultation and liaison arrangements with regard to air navigation¹⁸.

1 As to the Secretary of State see PARA 33.

2 As to the constitution of the CAA see PARA 50.

3 See the Civil Aviation Authority (Air Navigation) Directions 2001 (CAA's Official Record Series 7, No 1) made by the Secretary of State in exercise of his powers under the Transport Act 2000 s 66(1) (see PARA 58). As to the managed areas see PARA 58 note 3.

4 'UK airspace' means that airspace comprising all airspace of the United Kingdom and all airspace outside the United Kingdom for which the government of the United Kingdom has assumed responsibility under international arrangements: Civil Aviation Authority (Air Navigation) Directions 2001 preamble.

- 5 Civil Aviation Authority (Air Navigation) Directions 2001 para 1.
- 6 Civil Aviation Authority (Air Navigation) Directions 2001 para 2(a). This provision also applies to advice required by the Secretary of State for Defence. As to the Secretary of State for Defence see PARA 33.
- 7 As to ICAO see PARAS 20-22. As to ICAO Annex III see PARA 6.
- 8 Civil Aviation Authority (Air Navigation) Directions 2001 para 2(b).
- 9 Civil Aviation Authority (Air Navigation) Directions 2001 para 2(c).
- 10 Civil Aviation Authority (Air Navigation) Directions 2001 para 2(d).
- 11 Civil Aviation Authority (Air Navigation) Directions 2001 para 2(e).
- 12 Civil Aviation Authority (Air Navigation) Directions 2001 para 2(f).
- 13 Civil Aviation Authority (Air Navigation) Directions 2001 para 2(g).
- 14 Civil Aviation Authority (Air Navigation) Directions 2001 para 2(h).
- 15 Civil Aviation Authority (Air Navigation) Directions 2001 para 2(i).
- 16 Civil Aviation Authority (Air Navigation) Directions 2001 para 2(j).
- 17 Civil Aviation Authority (Air Navigation) Directions 2001 para 2(k).
- 18 See the Civil Aviation Authority (Air Navigation) Directions 2001 para 4.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(ii) Air Navigation Functions/61. Directorate of Airspace Policy.

61. Directorate of Airspace Policy.

The Civil Aviation Authority ('CAA')¹ has established a Directorate of Airspace Policy to carry out the duties which have been given to it by the Secretary of State² with regard to air navigation in a managed area³. The Directorate is headed by the person nominated by the Secretary of State for this purpose⁴.

The CAA must make such arrangements as it considers appropriate for the role of the Ministry of Defence ('MOD') in the joint and integrated civil/military provisions of air traffic services and must ensure that these arrangements are documented in a Memorandum of Understanding between the CAA and the MOD⁵. The CAA must also enter into arrangements with the MOD to second and resource an appropriate number of personnel of the appropriate rank and experience from the MOD as the MOD contribution to the functioning of the Directorate⁶.

1 As to the constitution of the CAA see PARA 50.

2 As to the Secretary of State see PARA 33.

3 Civil Aviation Authority (Air Navigation) Directions 2001 (CAA's Official Record Series 7, No 1) para 3(a). As to the giving of directions by the Secretary of State see PARAS 58-60. As to the managed areas see PARA 58 note 3.

4 Civil Aviation Authority (Air Navigation) Directions 2001 para 3(a). The reference in the text to the person nominated is to the person nominated under the Transport Act 2000 s 66(3); see PARA 58.

5 Civil Aviation Authority (Air Navigation) Directions 2001 para 3(b). As to the MOD see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 438 et seq.

6 Civil Aviation Authority (Air Navigation) Directions 2001 para 3(c).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(ii) Air Navigation Functions/62. Joint Air Navigation Services Council.

62. Joint Air Navigation Services Council.

The Civil Aviation Authority ('CAA')¹ must ensure the continuation of the Joint Air Navigation Services Council ('JANSC')². JANSC comprises a chairman³ and representatives from the body responsible for military air traffic operations and each holder of an air traffic services licence⁴. The functions of JANSC are to:

- 37 (1) enable the CAA to oversee⁵ the arrangements between a licence holder and the Secretary of State for Defence so as to ensure that air traffic services continue to be provided on a joint and integrated basis⁶;
- 38 (2) review the provisions of joint and integrated air traffic services⁷;
- 39 (3) submit a written report annually to the CAA setting out the effectiveness of the Operating Protocol between the Secretary of State for Defence and a licence holder in sustaining and improving joint and integrated air traffic services⁸; and
- 40 (4) act as the initial arena for discussing and resolving differences of opinion and disputes between a licence holder and the Secretary of State for Defence concerning the arrangements set out in the Operating Protocol and seeking to keep to a minimum the occasions on which disputes are referred to the CAA⁹.

1 As to the constitution of the CAA see PARA 50.

2 Civil Aviation Authority (Air Navigation) Directions 2001 (CAA's Official Record Series 7, No 1) para 6.

3 The chairman is to be the person nominated under the Transport Act 2000 s 66(3): see PARA 58.

4 Civil Aviation Authority (Air Navigation) Directions 2001 para 6, Appendix para 1. The chairman is accountable, in respect of JANSC responsibilities, to the CAA: Appendix para 2. As to air traffic services licence holders see PARA 139 et seq.

5 In accordance with the Civil Aviation Authority (Air Navigation) Directions 2001 and the Transport Act 2000 s 70 (see PARA 56).

6 Civil Aviation Authority (Air Navigation) Directions 2001 Appendix para 3. As to the Secretary of State for Defence see PARA 33.

7 Civil Aviation Authority (Air Navigation) Directions 2001 Appendix para 4. JANSC must meet at least every six months, or at more frequent intervals as required by the chairman: Appendix para 4.

8 Civil Aviation Authority (Air Navigation) Directions 2001 Appendix para 5.

9 Civil Aviation Authority (Air Navigation) Directions 2001 Appendix para 6. Matters directly covered by commercial contracts between the Secretary of State for Defence and any licence holder which are subject to resolution in other fora are not included: Appendix para 6.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(ii) Air Navigation Functions/63. Information.

63. Information.

The Civil Aviation Authority ('CAA')¹ may, for any purpose connected with its air navigation functions², serve on a person who provides air traffic services³ a notice⁴ which:

- 41 (1) requires that person to produce any documents⁵ which are specified or described in the notice and are in his custody or under his control, and to produce them at a time and place so specified and to a person so specified⁶; or
- 42 (2) requires that person to supply information specified or described in the notice, and to supply it at a time and place and in a form and manner so specified and to a person so specified⁷.

No person may be required to produce documents which he could not be compelled to produce in civil proceedings in the High Court or to supply information which he could not be compelled to supply in such proceedings⁸. If a person without reasonable excuse fails to do anything required of him by such a notice⁹ he is guilty of an offence¹⁰. If a person intentionally alters, suppresses¹¹ or destroys a document which he has been required to produce¹² he also is guilty of an offence¹³. If a person makes default in complying with a notice¹⁴, the court may on the CAA's application make such order as the court thinks fit for requiring the default to be made good¹⁵.

1 As to the constitution of the CAA see PARA 50.

2 As to the CAA's air navigation functions see PARA 58.

3 As to the meaning of 'air traffic services' see PARA 34 note 4.

4 Transport Act 2000 s 71(1). As to the service of documents see further PARA 81 note 13.

5 For these purposes, a reference to producing a document includes a reference to producing a legible and intelligible copy of information recorded otherwise than in legible form: Transport Act 2000 s 71(8).

6 Transport Act 2000 s 71(1)(a).

7 Transport Act 2000 s 71(1)(b). A requirement may be made under s 71(1)(b) only if the person is carrying on a business: s 71(2).

8 Transport Act 2000 s 71(3), (10).

9 Ie under the Transport Act 2000 s 71(1): see the text to notes 1-7.

10 Transport Act 2000 s 71(4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 71(4). As to the standard scale see PARA 50 note 8.

11 For these purposes, a reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form: Transport Act 2000 s 71(9).

12 Ie by a notice under the Transport Act 2000 s 71(1): see the text to notes 1-7.

13 Transport Act 2000 s 71(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine: s 71(5). As to the statutory maximum see PARA 43 note 12.

14 Ie under the Transport Act 2000 s 71(1): see the text to notes 1-7.

15 Transport Act 2000 s 71(6). An order under s 71(6) may provide that all the costs or expenses of and incidental to the application are to be borne by the person in default, or if officers of a company or other association are responsible for its default, by those officers: s 71(7).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iii) Finance/64. General duties.

(iii) Finance

64. General duties.

The Civil Aviation Authority ('CAA') must conduct its affairs so as to secure that its revenue is sufficient to meet charges properly chargeable to revenue account¹. It must also act on lines settled with the approval of the Secretary of State² and secure that any of its subsidiaries acts on those lines when framing and carrying out proposals involving it in substantial outlay on capital account³.

1 Civil Aviation Act 1982 s 8(1). Revenue includes any grant towards revenue made to the CAA in pursuance of s 12(1); s 8(1); see PARA 67. As to the constitution of the CAA see PARA 50.

2 As to the Secretary of State see PARA 33.

3 Civil Aviation Act 1982 s 8(2). This provision also applies to any decision to hire equipment, the purchase of which at the time of the hire would have involved such an outlay, unless the CAA hires the equipment from a subsidiary or the subsidiary hires such equipment from the CAA: s 8(2)(b), (3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iii) Finance/65. The initial debt.

65. The initial debt.

On 16 November 1973, the Civil Aviation Authority ('CAA')¹ assumed² a debt (the 'initial debt') to the Secretary of State³ in respect of property and rights transferred to it⁴. The scheme of payment is determined from time to time by the Secretary of State with Treasury approval⁵.

1 As to the constitution of the CAA see PARA 50.

2 See the Civil Aviation Act 1971 s 7 (repealed).

3 As to the Secretary of State see PARA 33.

4 See the Civil Aviation Act 1982 s 9(1), Sch 3 paras 1-5 (Sch 3 para 3 amended by the Capital Allowances Act 1990 s 164, Sch 2). This debt concerned aerodromes and other undertakings listed in the Civil Aviation Act 1971 Sch 2 (repealed).

5 Civil Aviation Act 1982 s 9(2). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517. Any sums received by the Secretary of State by way of interest on, or repayment of, the initial debt must be paid into the National Loans Fund: s 9(3). As to the National Loans Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 727 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iii) Finance/66. Borrowing powers.

66. Borrowing powers.

The Civil Aviation Authority ('CAA') may borrow such sums as it may require for performing its functions¹.

The CAA's power to borrow sums in sterling otherwise than by way of temporary loan is limited to borrowing from the Secretary of State², or (with the consent of the Secretary of State) from the Commission of the European Communities or the European Investment Bank, any sums which the CAA may require for capital purposes or for fulfilling a guarantee entered into by the CAA³. Except for this limitation, the CAA may borrow any sums it has power to borrow, whether in sterling or in a currency other than sterling, from the Secretary of State or (with the consent of, or in accordance with a general authorisation given by, the Secretary of State) from any other person⁴.

No such consent or authorisation as is mentioned above may be given by the Secretary of State without the approval of the Treasury⁵.

The aggregate amount outstanding in respect of the principal of any money borrowed by the CAA and the initial debt must not exceed £500 million or such greater sum not exceeding £750 million as may from time to time be specified by an order made by the Secretary of State; but no such order may be made unless a draft of it has been laid before and approved by a resolution of the House of Commons⁶.

1 Civil Aviation Act 1982 s 10(1). As to the constitution of the CAA see PARA 50.

2 As to the Secretary of State see PARA 33.

3 Civil Aviation Act 1982 s 10(2).

4 Civil Aviation Act 1982 s 10(3). The reference to a currency other than sterling includes a reference to units of account defined by reference to more than one currency: s 10(7) (added by the Civil Aviation Authority (Borrowing Powers) Act 1990 s 1(1), (3)).

5 Civil Aviation Act 1982 s 10(4). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517. A statement in writing by the Secretary of State to the effect that the approval of the Treasury has been given for any such consent or authorisation is conclusive evidence of that fact in any legal proceedings: s 10(5).

6 Civil Aviation Act 1982 s 10(6) (amended by the Civil Aviation Authority (Borrowing Powers) Act 1990 s 1(2)). See the Civil Aviation Authority (Borrowing Powers) Order 1995, SI 1995/1289, specifying £550 million as the aggregate amount in respect of money borrowed and initial debt which may not be exceeded. As to the initial debt see PARA 65.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iii) Finance/67. Government grants and loans.

67. Government grants and loans.

The Secretary of State¹ may make to the Civil Aviation Authority ('CAA') out of money provided by Parliament grants of such amounts as he thinks fit².

The Secretary of State may also lend to the CAA, for capital purposes or for fulfilling a guarantee entered into by the CAA³, any sums which the Treasury⁴ may issue to the Secretary of State out of the National Loans Fund⁵. Determinations as to the scheme of repayment are given by the Secretary of State⁶, and the sums received by the Secretary of State are paid into the National Loans Fund⁷. All such loans and determinations can only be made by the Secretary of State with Treasury approval⁸.

1 As to the Secretary of State see PARA 33.

2 Civil Aviation Act 1982 s 12(1)(a). The Secretary of State may direct that the whole or part of the grant is not to be used otherwise than for the purposes of such of the CAA's functions as are specified in the direction: s 12(1)(b). See also PARA 41. As to the constitution of the CAA see PARA 50.

3 See under the Civil Aviation Act 1982 s 10; and PARA 66.

4 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 Civil Aviation Act 1982 s 12(2), (4). As to the National Loans Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 727 et seq.

6 Civil Aviation Act 1982 s 12(3).

7 Civil Aviation Act 1982 s 12(4).

8 Civil Aviation Act 1982 s 12(2), (3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iii) Finance/68. Treasury guarantees.

68. Treasury guarantees.

The Treasury¹ may guarantee the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation relating to, any sums which the Civil Aviation Authority ('CAA') borrows from a person other than the Secretary of State². Sums required by the Treasury for fulfilling these guarantees are charged on and issued out of the Consolidated Fund³. Where sums are issued in fulfilment of such a guarantee, the CAA must make such payments as the Treasury directs towards repayment of those sums and payment of interest⁴.

A statement of any guarantee given must be laid before each House of Parliament by the Treasury immediately after it has been given; and where any sum has been issued for fulfilling a guarantee, the Treasury must, as soon as possible after the end of each financial year, lay before each House of Parliament a statement relating to that sum⁵.

1 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

2 Civil Aviation Act 1982 s 14(1) (amended by the Miscellaneous Financial Provisions Act 1983 s 4(1), Sch 2). The manner and the conditions of the guarantee are determined by the Treasury: Civil Aviation Act 1982 s 14(1). As to the constitution of the CAA see PARA 50. As to the Secretary of State see PARA 33.

3 Civil Aviation Act 1982 s 14(3). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

4 Civil Aviation Act 1982 s 14(4).

5 Civil Aviation Act 1982 s 14(2). The obligation begins with the year in which the sum is issued and ends with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged: s 14(2). As to the meaning of 'financial year' see PARA 72 note 9.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iii) Finance/69. Charges payable to the Civil Aviation Authority.

69. Charges payable to the Civil Aviation Authority.

After consultation with the Secretary of State¹, the Civil Aviation Authority ('CAA') may determine a scheme of charges to be paid to it in respect of the performance of its functions as specified in the scheme². The scheme may specify the amount of the charge and the manner in which it must be paid, or may provide for different charges³.

Regulations may also determine charges which are to be paid to the CAA or may secure that no charge is payable to it in respect of such of its functions as may be prescribed⁴. Such regulations may prescribe the amount of a charge or the manner in which it must be paid⁵.

In so far as a scheme and regulations make different provision with respect to the same matter the provisions made by the scheme are to be disregarded⁶.

Where provision for a charge has been made in respect of any function, it is the duty of the CAA to charge accordingly as respects the performance of the function; however, the CAA may waive the whole or part of the charge if it thinks fit to do so in a particular case⁷. It may also enter into an agreement for the payment of charges as determined in the agreement in respect of the performance by the CAA of any of its functions, other than a function in respect of which provision is made for the making of a charge or of no charge⁸.

No charges may be determined under the foregoing provisions in respect of the provision of air navigation services, and provision may not be made by or under an air navigation order for the payment of fees to the CAA⁹.

1 As to the Secretary of State see PARA 33.

2 Civil Aviation Act 1982 s 11(1). As to the constitution of the CAA see PARA 50.

3 Civil Aviation Act 1982 s 11(1). The scheme may (1) specify a scale of charges by reference to which the amount is to be ascertained, and it may provide that the charges will be of such amount, not exceeding that specified in the scheme, as may be decided by the CAA having regard to the expense incurred by it in performing the function in question and to such other factors as may be so specified; (2) provide for different charges for cases of such different descriptions as may be specified; (3) specify the time at which and the person by whom any charge is to be paid: s 11(1)(a)-(c). The scheme comes into force on such day as may be specified in the scheme, not being earlier than the expiration of the period of 60 days beginning with the day on which the scheme is published in the prescribed manner; and a scheme may vary or revoke a previous scheme: s 11(2).

4 Civil Aviation Act 1982 s 11(3). Regulations were made under the Civil Aviation Act 1971 s 9 (repealed; and replaced by the Civil Aviation Act 1982 s 11), but were revoked and not replaced: see the Civil Aviation Authority (Charges) Regulations 1976, SI 1976/1396 (revoked by SI 1978/1633).

5 Civil Aviation Act 1982 s 11(3)(a), (b). The time at which and the person by whom the charge must be paid, as well as a maximum or minimum charge or a scale of charges, may also be prescribed in the scheme: s 11(3)(a), (b).

6 Civil Aviation Act 1982 s 11(4).

7 Civil Aviation Act 1982 s 11(5).

8 Civil Aviation Act 1982 s 11(6).

9 Civil Aviation Act 1982 s 11(7). As to air navigation services see PARA 55 et seq. As to air navigation orders see PARA 353 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iii) Finance/70. Reserves.

70. Reserves.

The Secretary of State¹ may, with Treasury² approval, give directions to the Civil Aviation Authority ('CAA') in regard to the establishment or management of reserves, or the application of any reserves for the purposes of the CAA³.

The Secretary of State may also, with Treasury approval and after consultation with the CAA, direct the CAA to pay to him the whole or part of the sums standing to the credit of any of its reserves⁴.

1 As to the Secretary of State see PARA 33.

2 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

3 Civil Aviation Act 1982 s 8(4). As to the constitution of the CAA see PARA 50.

4 Civil Aviation Act 1982 s 13(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iii) Finance/71. Application of revenue.

71. Application of revenue.

If, in any accounting year¹, the revenue of the Civil Aviation Authority ('CAA') exceeds the total sum properly chargeable by the authority to revenue account for that year, the excess must be applied in such manner as the Secretary of State², with Treasury³ approval and after consultation with the CAA, may direct⁴. The Secretary of State may direct that the whole or part of the excess be paid to him⁵.

1 As to the meaning of 'accounting year' see PARA 72 note 2.

2 As to the Secretary of State see PARA 33.

3 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

4 Civil Aviation Act 1982 s 13(1). As to the constitution of the CAA see PARA 50.

5 Civil Aviation Act 1982 s 13(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iii) Finance/72. Accounts and audit.

72. Accounts and audit.

Proper accounts and proper records must be kept by the Civil Aviation Authority ('CAA')¹, which must prepare, in respect of each accounting year², a statement of accounts, showing the state of affairs and the profit or loss of the CAA, in such form as the Secretary of State³ with Treasury⁴ approval directs⁵. As soon as the accounts of the CAA and the statement have been audited⁶, the CAA must send a copy of the statement together with any auditors' report to the Secretary of State⁷, who is then required to lay before each House of Parliament a copy of every document so received⁸.

As respects each financial year⁹, the Secretary of State must prepare an account of sums issued to him¹⁰ or received by him¹¹ and of the sums required to be paid into the National Loans Fund¹², and of the disposal by him of such sums¹³; and the Secretary of State must send a copy of the account to the Comptroller and Auditor General¹⁴ not later than the end of November next following that year¹⁵.

The Comptroller and Auditor General must examine, certify and report on each statement and account so sent to him and must lay copies of them and of his report before each House of Parliament¹⁶.

1 Civil Aviation Act 1982 s 15(1)(a). As to the constitution of the CAA see PARA 50.

2 'Accounting year' means the period of 12 months ending with 31 March: Civil Aviation Act 1982 s 105(1).

3 As to the Secretary of State see PARA 33.

4 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

5 Civil Aviation Act 1982 s 15(1)(b).

6 The accounts and the statement are to be audited by auditors appointed annually by the Secretary of State after consultation with the CAA, and a person may not be appointed unless he is eligible for appointment as a company auditor under the Companies Act 1989 s 25 (see **COMPANIES** vol 15 (2009) PARA 969); Civil Aviation Act 1982 s 15(2)(a) (s 15(2) substituted by SI 1984/65; and the Civil Aviation Act 1982 s 15(2)(a) amended by SI 1991/1997).

The Secretary of State may by order made with the consent of the Treasury modify or repeal the Civil Aviation Act 1982 s 15(1)(c) (see the text and note 7), or s 15(2) as for the time being in force: s 15(3).

7 Civil Aviation Act 1982 s 15(1)(c) (substituted by SI 1984/65). See note 6.

8 Civil Aviation Act 1982 s 15(2)(b) (as substituted: see note 6). See note 6.

9 'Financial year' means the 12 months ending with 31 March: Interpretation Act 1978 s 5, Sch 1.

10 Ie in pursuance of the Civil Aviation Act 1982 s 12(4) (see PARA 67).

11 Ie in pursuance of the Civil Aviation Act 1982 s 13 (excess of revenue: see PARA 71).

12 Ie in pursuance of the Civil Aviation Act 1982 s 12(4) (loans: see PARA 67) or s 9 (initial debt: see PARA 65). As to the National Loans Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 727 et seq.

13 Civil Aviation Act 1982 s 15(4)(a).

14 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

15 Civil Aviation Act 1982 s 15(4)(b).

16 Civil Aviation Act 1982 s 15(4).

UPDATE

72 Accounts and audit

NOTE 6--For 'company auditor under the Companies Act 1989 s 25' read 'statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264)': Civil Aviation Act 1982 s 15(2)(a) (further amended by SI 2008/948).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iii) Finance/73. Civil Aviation Authority Pension Scheme.

73. Civil Aviation Authority Pension Scheme.

The Secretary of State¹ may by order make provision for the allocation of assets, rights, liabilities or obligations between different sections of the Civil Aviation Authority Pension Scheme². Such an order may include provision for or in connection with securing that the Scheme continues to be approved for the purposes of the relevant enactments³, the amendment of the Scheme⁴, and the manner in which questions arising under the order are to be determined⁵. An order may be made so as to have effect from a date falling before the making of the order⁶. In making an order the Secretary of State must secure that each contributing member or beneficiary⁷ is overall in materially at least as good a position, as respects pension arrangements, as a result of the order⁸.

1 As to the Secretary of State see PARA 33.

2 Transport Act 2000 s 96(1). See the Transport Act 2000 (Civil Aviation Authority Pension Scheme) Order 2001, SI 2001/853 (amended by SI 2001/3649; SI 2002/1555). The power to make an order under the Transport Act 2000 s 96 is exercisable only after consultation with the trustees of the Civil Aviation Pension Scheme: s 103(12). As to orders see further PARA 34 note 4.

3 The relevant enactments are: (1) the Income and Corporation Taxes Act 1988 Pt XIV Ch I (ss 590-612) (retirement benefit schemes) (repealed by the Finance Act 2004 s 326, Sch 42, Pt 3; see now the Income Tax (Earnings and Pensions) Act 2003); (2) the Pension Schemes Act 1993 Pt III (ss 7-68), so far as relating to occupational pension schemes: Transport Act 2000 s 96(8). As to retirement benefit schemes and occupational pension schemes see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARAS 561 et seq, 741 et seq.

4 The reference in the Transport Act 2000 s 96(2) to the amendment of the Scheme includes a reference to the amendment of (1) the trust deed of the Scheme; (2) the rules of the Scheme; (3) any other instrument relating to the constitution, management or operation of the Scheme: s 96(3).

5 Transport Act 2000 s 96(2).

6 Transport Act 2000 s 96(4).

7 In each person who (1) is or has at any time been a contributing member of the Scheme; or (2) is or may become entitled to benefits in respect of a person falling within head (1): s 96(6). A contributing member of the Scheme is a member who makes, and whose employer makes in respect of him, contributions under the Scheme: s 96(7).

8 Transport Act 2000 s 96(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iv) Reports and Information/74. Annual report.

(iv) Reports and Information

74. Annual report.

As soon as possible after the end of each accounting year¹, the Civil Aviation Authority ('CAA') must make to the Secretary of State² a report on the performance of its functions during that year³. The report must (1) set out any direction⁴ given by the Secretary of State during that year unless he has notified the CAA that in his opinion it would be against the national interest to set it out in the report⁵; (2) incorporate any statement of policy⁶ which the CAA may have published during that year⁷; and (3) include such information as may be specified by the Secretary of State with respect to the CAA's plans, activities and financial position⁸. The Secretary of State must lay a copy of the report before each House of Parliament⁹.

1 As to the meaning of 'accounting year' see PARA 72 note 2.

2 As to the Secretary of State see PARA 33.

3 Civil Aviation Act 1982 s 21(1). As to the general powers and functions of the CAA see PARA 51. As to the constitution of the CAA see PARA 50.

4 Ie any direction given to the CAA under the Civil Aviation Act 1982 s 6: see PARA 53.

5 Civil Aviation Act 1982 s 21(2)(a) (amended by the Transport Act 2000 s 274, Sch 31 Pt I(5)).

6 Ie published under the Civil Aviation Act 1982 s 69: see PARA 108.

7 Civil Aviation Act 1982 s 21(2)(b).

8 Civil Aviation Act 1982 s 21(2)(d).

9 Civil Aviation Act 1982 s 21(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iv) Reports and Information/75. Duty to provide information.

75. Duty to provide information.

The Civil Aviation Authority ('CAA') is under a duty to furnish to the Secretary of State¹ such information as he may specify and as the CAA has or can reasonably be expected to obtain relating to itself or to civil aviation². The CAA must give the Secretary of State notice of:

- 43 (1) any proposal to merge or any merger of a body holding an air transport licence or operating licence with another body³;
- 44 (2) matters affecting international relations⁴; or
- 45 (3) matters involving noise, vibration, pollution or other disturbance attributable to aircraft used for the purposes of civil aviation⁵.

The CAA is entitled to recover from the Secretary of State a sum equal to any expense reasonably incurred in furnishing such information⁶.

The CAA may require holders of certain licences⁷, recipients of approval given by the CAA, persons who have held themselves out as ones who may enter into contracts to make available accommodation for persons or goods on aircraft, and persons carrying on business as manufacturers of aircraft or aircraft engines or equipment or as insurers of aircraft, to furnish certain information to it⁸. Provision may be made by regulations for requiring those persons to furnish such information to the Secretary of State as may be prescribed⁹.

Failure to supply information required is punishable on summary conviction with a fine not exceeding level 3 on the standard scale¹⁰; and knowingly or recklessly furnishing information which is false in a material particular is punishable on summary conviction with a fine not exceeding the statutory maximum¹¹, or on conviction on indictment, with a fine or imprisonment for a term not exceeding two years or both¹². The CAA may revoke any relevant licence, certificate or approval¹³.

No information relating to a particular person which has been furnished to the CAA¹⁴ may be disclosed save with that person's written consent¹⁵ or where the CAA determines that the information may be disclosed after the person concerned was given the opportunity of making representations¹⁶ or where the person concerned is dead or is a body corporate which has ceased to exist¹⁷. The CAA may, however, determine that the information is of the same kind as that which it has determined may be disclosed, and thus can be disclosed¹⁸.

1 As to the Secretary of State see PARA 33.

2 Civil Aviation Act 1982 s 17(1)(a). The CAA must permit the Secretary of State to have access to all relevant documents under the CAA's control: s 17(1)(b). Nothing in s 17(1) is to be construed as prejudicing the generality of s 16(1) (see PARA 54), and nothing in s 17(1)(c), (d) (see the text to notes 3-4) is to be construed as prejudicing the generality of s 17(1)(a): s 17(2). As to the constitution of the CAA see PARA 50.

3 Civil Aviation Act 1982 s 17(1)(c) (amended by SI 1992/2992 and SI 1993/3039). See note 2. As to air transport licences and operating licences see PARA 98 et seq.

4 Civil Aviation Act 1982 s 17(1)(d)(i). See note 2.

5 Civil Aviation Act 1982 s 17(1)(d)(ii). See note 2. As to noise, vibration and pollution see PARAS 259-264.

6 Civil Aviation Act 1982 s 17(3).

7 le a holder of a licence issued by the CAA under the Civil Aviation Act 1982 or a licence or certificate issued by the CAA under an air navigation order (see PARA 353) or an operating licence granted by the CAA in accordance with EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) on licensing of air carriers (see PARA 98): Civil Aviation Act 1982 s 84(1)(a).

8 See the Civil Aviation Act 1982 s 84(1), (2) (s 84(1) amended by SI 1992/2992 and SI 1993/3039; and the Civil Aviation Act 1982 s 84(2) amended by the Statute Law (Repeals) Act 1995 and by SI 1992/2992).

9 See the Civil Aviation Act 1982 s 84(3). At the date at which this volume states the law no such regulations had been made.

10 See the Civil Aviation Act 1982 s 84(4)(a) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 50 note 8. The failure to provide the information is an offence notwithstanding the fact that at the relevant time the person concerned may not have been in the United Kingdom and is neither a United Kingdom national nor a body incorporated under the law of a part of the United Kingdom or of a relevant overseas territory: Civil Aviation Act 1982 s 84(4). As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the meaning of 'United Kingdom national' see PARA 52 note 2. As to the meaning of 'relevant overseas territory' see PARA 110 note 20.

11 As to the statutory maximum see PARA 43 note 12.

12 Civil Aviation Act 1982 s 84(4)(b).

13 Civil Aviation Act 1982 s 84(4)(c).

14 The provisions of the Civil Aviation Act 1982 s 23(1) (see the text and notes 15-18) apply also in relation to the disclosure by an officer of the Secretary of State of information furnished to the Secretary of State: see s 23(2).

15 Civil Aviation Act 1982 s 23(1)(a). The provisions of s 23(1) apply to ss 16, 17 (provision of information: see PARA 54), s 28 (management of aerodromes: see PARAS 176, 249, 252), s 36 (so far only as it relates to aerodromes owned or managed by the CAA) (health control: see PARA 318), ss 64-71 (except s 69) (air transport: see PARA 106 et seq), ss 78-80 (noise and vibration: see PARAS 260-264), and s 84 (see the text and notes 7-13): s 23(6) (amended by the Airports Act 1986 s 83(1), Sch 4 para 8(1) and by SI 2004/77).

Nothing in the Civil Aviation Act 1982 s 23(1) prohibits the disclosure of any information:

- 1 (1) by the CAA or a member or employee of the CAA to the Secretary of State or an officer of his or, with the consent of the Secretary of State, to an international organisation of which the United Kingdom is a member (s 23(4)(a));
- 2 (2) by an officer of the Secretary of State to the CAA or a member or employee of the CAA or to such an organisation or, in accordance with directions given by the Secretary of State (a) to an officer of any government department; (b) in connection with negotiations conducted by officers of the Secretary of State with representatives of the government of any country or territory outside the United Kingdom; or (c) in connection with the discharge of any obligation of the United Kingdom under international arrangements (s 23(4)(b));
- 3 (3) to a person to whom the information in question is required to be disclosed by regulations made in pursuance of s 7(2) (see PARA 50) (s 23(4)(c));
- 4 (4) in pursuance of s 67(2) or s 67(4) (air transport licensing: see PARA 117) (s 23(4)(d));
- 5 (5) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings arising out of any enactment relating to civil aviation or for the purposes of any investigation undertaken in pursuance of regulations made by virtue of s 75 (investigation of accidents: see PARA 600) (s 23(4)(f)).

Unauthorised disclosure by the CAA, a member or employee of the CAA, or an officer of the Secretary of State is an offence punishable on summary conviction with a fine not exceeding the statutory maximum or on conviction on indictment with a fine or (save in the case of the CAA) imprisonment for a term not exceeding two years or both: s 23(5).

16 Civil Aviation Act 1982 s 23(1)(b). For exceptions and penalties see note 15.

17 Civil Aviation Act 1982 s 23(1)(c). For exceptions and penalties see note 15. Reasonable inquiries to find a body corporate must be made: see s 23(3) (amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2; SI 1986/1035; and SI 1992/3179).

18 Civil Aviation Act 1982 s 23(1)(d). For exceptions and penalties see note 15. As to cases where the CAA may determine that information can be disclosed see s 23(1)(b), (c); and the text to notes 16-17.

UPDATE

75 Duty to provide information

NOTE 3--Civil Aviation Act 1982 s 17(1)(c) further amended: SI 2009/41.

NOTE 7--Civil Aviation Act 1982 s 84(1)(a) amended: SI 2009/41.

NOTE 17--Civil Aviation Act 1982 s 23(3) amended: SI 2009/1941.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iv) Reports and Information/76. Publication of information and advice.

76. Publication of information and advice.

The Civil Aviation Authority ('CAA')¹ may publish information and advice which it thinks it is expedient to give to operators and owners of aircraft, owners and managers of aerodromes², or persons travelling in aircraft and persons with rights in property carried in them³. The CAA may alternatively arrange for the publication of such information and advice⁴. Publication may be in such a form and manner as the CAA thinks appropriate⁵. So far as practicable the CAA must secure the exclusion of any matter relating to the affairs of a person if the CAA thinks its publication would or might seriously and prejudicially affect the person's interests⁶. The Office of Fair Trading⁷ must consult the CAA before publishing⁸ any information or advice which may be published as described above⁹.

1 As to the constitution of the CAA see PARA 50.

2 As to the meaning of 'aerodrome' see PARA 175; definition applied by the Transport Act 2000 s 90(7). A 'manager of an aerodrome' is a person who is in charge of it or holds a licence granted in respect of it by virtue of the Civil Aviation Act 1982 s 60 (see PARA 353); Transport Act 2000 s 90(7).

3 Transport Act 2000 s 90(1).

4 Transport Act 2000 s 90(2).

5 Transport Act 2000 s 90(3).

6 Transport Act 2000 s 90(4). This does not apply if the CAA thinks publication of the matter would be in the public interest: s 90(5).

7 As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. See note 9.

8 Ie under the Enterprise Act 2002 s 6: see **COMPETITION** vol 18 (2009) PARAS 7, 337.

9 Transport Act 2000 s 90(6) (amended by the Enterprise Act 2002 s 278(1), Sch 25 para 44(1), (9)(a)).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(4) THE CIVIL AVIATION AUTHORITY/(iv) Reports and Information/77. Review and information.

77. Review and information.

So far as it appears to the Civil Aviation Authority ('CAA') practicable to do so with a view to facilitating the exercise of its functions under Part I of the Transport Act 2000¹, the CAA must keep under review the provision (in the United Kingdom² and elsewhere) of air traffic services³ and collect information about the provision (in the United Kingdom and elsewhere) of those services⁴. The Secretary of State⁵ may give directions indicating considerations to which the CAA is to have particular regard in deciding the order of priority in which matters are to be reviewed⁶. If the CAA thinks it expedient or it is asked by the Secretary of State or the Office of Fair Trading⁷ to do so, it must provide information, advice and help to the Secretary of State or the Office of Fair Trading regarding any matter in respect of which the CAA has a function under Part I of the Transport Act 2000⁸.

1 le the Transport Act 2000 Pt I (ss 1-107). As to the general powers and functions of the CAA see PARA 51. As to the constitution of the CAA see PARA 50.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 As to the meaning of 'air traffic services' see PARA 34 note 4.

4 Transport Act 2000 s 91(1).

5 As to the Secretary of State see PARA 33.

6 Transport Act 2000 s 91(2). As to directions see further PARA 34 note 11.

7 As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. See note 8.

8 Transport Act 2000 s 91(3) (amended by the Enterprise Act 2002 s 278(1), Sch 25 para 44(1), (10)(a)). The CAA may recover from the Secretary of State or the Office of Fair Trading a sum equal to any expense reasonably incurred by it in providing anything to the person concerned under the Transport Act 2000 s 91(3); s 91(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(i) Schemes/78. Meaning of 'transfer scheme'.

(5) TRANSFER SCHEMES

(i) Schemes

78. Meaning of 'transfer scheme'.

A transfer scheme is a scheme which contains provisions falling within one or more of the following heads¹:

- 46 (1) provisions for the transfer of any of the property, rights or liabilities of the Civil Aviation Authority ('CAA')² or of all or part of its undertaking³, to the Secretary of State⁴, a company which is wholly owned by the Crown⁵, a company which is wholly owned by the CAA⁶, or a company which is a wholly owned subsidiary of a company wholly owned by the Crown or the CAA⁷;
- 47 (2) provisions for the transfer of any of the property, rights or liabilities of a company (the transferor) which is wholly owned by the CAA, or of all or part of the transferor's undertaking, to the Secretary of State, the CAA, a company which is wholly owned by the Crown, a company which is wholly owned by the CAA, or a company which is a wholly owned subsidiary of a company wholly owned by the Crown or the CAA⁸;
- 48 (3) provisions for the transfer of any of the property, rights or liabilities of a company (the transferor) which is a wholly owned subsidiary of a company wholly owned by the CAA, or of all or part of the transferor's undertaking, to the CAA, a company which is wholly owned by the Crown, a company which is wholly owned by the CAA, or a company which is a wholly owned subsidiary of a company wholly owned by the Crown or the CAA⁹;
- 49 (4) provisions for the transfer of any of the property, rights or liabilities of a company (the transferor) which is wholly owned by the Crown but which was wholly owned by the CAA on 1 February 2001¹⁰, or of all or part of the transferor's undertaking, to a company which is wholly owned by the Crown or a company which is a wholly owned subsidiary of the transferor¹¹;
- 50 (5) provisions for the transfer of any of the property, rights or liabilities of a company (the transferor) which is wholly owned by the Crown, or of all or part of the transferor's undertaking, to the CAA¹²;
- 51 (6) provisions for the transfer of any of the property, rights or liabilities of a company (the transferor) in circumstances where the transferor is a wholly owned subsidiary of a company (the holding company) wholly owned by the Crown and the holding company was wholly owned by the CAA on 1 February 2001¹³, or of all or part of the transferor's undertaking, to a company which is wholly owned by the Crown or a company which is a wholly owned subsidiary of a company wholly owned by the Crown¹⁴;
- 52 (7) provisions for the transfer of any of the property, rights or liabilities of a company (the transferor) which is a wholly owned subsidiary of a company wholly owned by the Crown, or of all or part of the transferor's undertaking, to the CAA¹⁵.

Detailed provision is made regarding transfer schemes, including the identification and allocation of property¹⁶; the discharge of functions by parties¹⁷; transfers by agreement¹⁸;

documents of title¹⁹; foreign property, rights and liabilities²⁰; certificates²¹; restrictions on dealing with land²²; the construction of agreements²³; proceedings²⁴; and third parties²⁵.

Provision is also made regulating the tax treatment of transfers which take place under transfer schemes²⁶.

1 Transport Act 2000 s 41(1).

2 As to the CAA see PARA 50 et seq.

3 To the extent that a scheme provides for the transfer of all or part of an undertaking, references in the Transport Act 2000 Pt I Ch II (ss 41-65) to property, rights and liabilities are to the undertaking or part (including property, rights and liabilities falling within it): s 41(9).

4 As to the Secretary of State see PARA 33.

5 'Company' has the meaning given by the Companies Act 1985 s 735(1) (see **COMPANIES** vol 14 (2009) PARAS 1, 24): Transport Act 2000 s 65(1)(a), (2). A company is wholly owned by the Crown at any time when all its shares are held by the Crown: s 65(1)(d), (3). Shares are held by the Crown if they are held (1) by a minister of the Crown or his nominee; (2) by a Northern Ireland minister or his nominee; (3) by a Northern Ireland department; or (4) by a company of which all the shares are held by the Crown: s 65(1)(g), (4). 'Northern Ireland minister' includes the First Minister and the deputy First Minister in Northern Ireland: s 65(1)(e), (5). The definitions in s 65 apply unless the contrary intention appears: s 65(12).

6 A company is wholly owned by the CAA at any time when it has no members except (1) the CAA and its wholly owned subsidiaries; or (2) persons acting on behalf of the CAA or its wholly owned subsidiaries: Transport Act 2000 s 65(1)(c), (6). The expressions 'subsidiary' and 'wholly owned subsidiary' have the meanings given by the Companies Act 1985 s 736 (see **COMPANIES** vol 14 (2009) PARA 25): Transport Act 2000 s 65(1)(h), (8).

7 Transport Act 2000 s 41(2).

8 Transport Act 2000 s 41(3).

9 Transport Act 2000 s 41(4).

10 Ie on the coming into force of the Transport Act 2000 s 41: see the Transport Act 2000 (Commencement No 3) Order 2001, SI 2001/57, art 3(1), Sch 2 Pt I.

11 Transport Act 2000 s 41(5).

12 Transport Act 2000 s 41(6).

13 See note 10.

14 Transport Act 2000 s 41(7).

15 Transport Act 2000 s 41(8).

16 See the Transport Act 2000 s 63, Sch 6 paras 1-7. For further general provisions see Sch 6 paras 24-25.

17 See the Transport Act 2000 Sch 6 paras 8-10.

18 See the Transport Act 2000 Sch 6 para 11.

19 See the Transport Act 2000 Sch 6 para 12.

20 See the Transport Act 2000 Sch 6 para 13.

21 See the Transport Act 2000 Sch 6 para 14.

22 See the Transport Act 2000 Sch 6 para 15.

23 See the Transport Act 2000 Sch 6 paras 16-17.

24 See the Transport Act 2000 Sch 6 para 18.

25 See the Transport Act 2000 Sch 6 paras 19-23.

26 See the Transport Act 2000 s 64, Sch 7.

UPDATE

78 Meaning of 'transfer scheme'

NOTES 5, 6--Transport Act 2000 s 65(2), (8) amended: SI 2009/1941.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(i) Schemes/79. Content of transfer schemes.

79. Content of transfer schemes.

The things which may be transferred by a transfer scheme¹ include²:

- 53 (1) anything which the transferor³ would not otherwise be capable of transferring or assigning⁴;
- 54 (2) anything to which the transferor may become entitled or subject after the scheme is made and before it comes into force⁵;
- 55 (3) anything situated anywhere in the United Kingdom⁶ or elsewhere⁷;
- 56 (4) anything subsisting under an enactment⁸;
- 57 (5) anything subsisting under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom⁹.

A scheme may divide any property, rights or liabilities of a transferor; and in connection with the division, the scheme may create for a transferor or transferee¹⁰ an interest in any property to which the scheme relates, create new rights and liabilities as between a transferor and a transferee with respect to any property to which the scheme relates, and make incidental provision as to the interests, rights and liabilities of other persons with respect to any property to which the scheme relates¹¹. A scheme may impose obligations on a transferor and transferee to take any necessary steps to secure that any such interest, right, liability or incidental provision has effect¹².

A scheme may (a) impose on a transferor or transferee an obligation to enter into a specified written agreement with a specified person or persons (who may be or include a transferor or transferee)¹³; (b) impose on a transferor or transferee an obligation to execute a specified instrument in favour of a specified person or persons (who may be or include a transferor or transferee)¹⁴; (c) make provision (for instance, where part of particular property is transferred) that rights and liabilities specified or identified in the scheme are enforceable by or against a transferor or transferee, or both¹⁵. A scheme may make such supplementary, incidental, consequential or transitional provisions as the scheme's maker thinks are appropriate¹⁶.

1 As to the meaning of 'transfer scheme' see PARA 78.

2 Transport Act 2000 s 42(1).

3 A transferor is any person from whom anything is or is to be transferred by a scheme: Transport Act 2000 s 65(1)(j), (11).

4 Transport Act 2000 s 42(1)(a).

5 Transport Act 2000 s 42(1)(b).

6 As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 Transport Act 2000 s 42(1)(c).

8 Transport Act 2000 s 42(1)(d).

9 Transport Act 2000 s 42(1)(e).

10 A transferee is any person to whom anything is or is to be transferred by a scheme: Transport Act 2000 s 65(1)(i), (10).

11 Transport Act 2000 s 42(2).

12 Transport Act 2000 s 42(3).

13 Transport Act 2000 s 42(4)(a). An obligation imposed by a provision included in a scheme by virtue of s 42(4)(a) or s 42(4)(b) is enforceable by civil proceedings by a person with whom the agreement is to be made or in whose favour the instrument is to be executed, or by any transferor or transferee: s 60(1), (2). The proceedings may be for an injunction or for any other appropriate relief or remedy: s 60(3). A transaction effected in pursuance of an obligation mentioned in s 60(1), (2) is to have effect subject to the provisions of any enactment providing for transactions of the kind concerned to be registered in a statutory register, but subject to that, is to be binding on all other persons, even if it would otherwise require the consent or concurrence of any other person: s 60(4).

14 Transport Act 2000 s 42(4)(b). See note 13.

15 Transport Act 2000 s 42(4)(c).

16 Transport Act 2000 s 42(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(i) Schemes/80. Transfer schemes made by the Civil Aviation Authority.

80. Transfer schemes made by the Civil Aviation Authority.

After consulting the Civil Aviation Authority ('CAA')¹, the Secretary of State² may give a direction requiring it to make a transfer scheme³. A direction may specify how a scheme is to be made and the time within which it is to be made and submitted to the Secretary of State⁴. The Secretary of State may modify⁵ a scheme before approving it and after consulting each person who is a transferor or a transferee⁶. Any transferor or transferee (other than the Secretary of State) must provide the Secretary of State with any information and other assistance he may reasonably require in connection with his powers to approve and modify a scheme⁷.

A transfer scheme made by the CAA does not come into force unless the Secretary of State approves it in writing⁸. Subject to that, a scheme comes into force on the day it specifies, or such a day as the approval specifies⁹. When a scheme comes into force it has effect to transfer (in accordance with its provisions) the property, rights and liabilities to which it applies¹⁰.

1 As to the CAA see PARA 50 et seq.

2 As to the Secretary of State see PARA 33.

3 Transport Act 2000 s 43(1). As to the meaning of 'transfer scheme' see PARA 78. As to directions see further PARA 34 note 11. In so far as a direction conflicts with the requirements of an enactment or instrument, the requirements are to be disregarded: s 43(3).

4 Transport Act 2000 s 43(2). In addition the direction may specify what is to be transferred, the transferor and the transferee: s 43(2). As to the meaning of 'transferor' see PARA 79 note 3; and as to the meaning of 'transferee' see PARA 79 note 10.

5 'Modify' includes add to, omit from and otherwise alter: Transport Act 2000 s 44(8).

6 Transport Act 2000 s 44(4).

7 Transport Act 2000 s 44(6). If a body fails without reasonable excuse to comply with s 44(6) it is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 44(7). As to the standard scale see PARA 50 note 8.

8 Transport Act 2000 s 44(1), (2).

9 Transport Act 2000 s 44(3).

10 Transport Act 2000 s 44(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(i) Schemes/81. Transfer schemes made by the Secretary of State.

81. Transfer schemes made by the Secretary of State.

If the Civil Aviation Authority ('CAA')¹ fails to submit a transfer scheme² within the time specified³, or the Secretary of State⁴ does not approve a transfer scheme submitted by the CAA, the Secretary of State may make a transfer scheme after consulting each person who is a transferor⁵ or a transferee⁶. Such a scheme comes into force on the day it specifies⁷. When the scheme comes into force it has effect to transfer (in accordance with its provisions) the property, rights and liabilities to which it applies⁸.

If the Secretary of State proposes to make a transfer scheme he may give a direction to an interested body⁹ requiring it to provide him with such information as he thinks necessary to enable him to make the scheme, and to do so within the period (being not less than 28 days starting with the date on which the direction is given) specified in the direction¹⁰.

If a body fails to comply with a direction¹¹, the Secretary of State may serve on it a notice which (1) requires it to produce any documents¹² which are specified or described in the notice and are in its custody or under its control, and to produce them at a time and place so specified and to a person so specified; or (2) requires it to supply information specified or described in the notice, and to supply it at a time and place and in a form and manner so specified and to a person so specified¹³. No body may be required to produce documents which it could not be compelled to produce in civil proceedings in the High Court or to supply information which it could not be compelled to supply in such proceedings¹⁴. If a body fails without reasonable excuse to do anything required of it by a notice¹⁵, it is guilty of an offence¹⁶. If a body intentionally alters, suppresses¹⁷ or destroys a document which it has been required to produce by a notice, it is guilty of an offence¹⁸. If a body makes default in complying with a notice, the court may on the Secretary of State's application make such order as the court thinks fit for requiring the default to be made good¹⁹.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'transfer scheme' see PARA 78.

3 I.e. in a direction under the Transport Act 2000 s 43: see PARA 80. As to directions see further PARA 34 note 11.

4 As to the Secretary of State see PARA 33.

5 As to the meaning of 'transferor' see PARA 79 note 3.

6 Transport Act 2000 s 45(1), (2). As to the meaning of 'transferee' see PARA 79 note 10.

7 Transport Act 2000 s 45(3).

8 Transport Act 2000 s 45(4).

9 For these purposes, the interested bodies are (1) the CAA; (2) a company which is wholly owned by the Crown; (3) a company which is wholly owned by the CAA; (4) a company which is a wholly owned subsidiary of a company falling within head (2) or head (3): Transport Act 2000 s 46(2). As to the meanings of 'company' and 'company wholly owned by the Crown' see PARA 78 note 5; and as to the meanings of 'company wholly owned by the CAA', 'subsidiary' and 'wholly owned subsidiary' see PARA 78 note 6.

10 Transport Act 2000 s 46(1). A person commits an offence if in giving information he makes a statement which he knows to be false in a material particular, or he recklessly makes a statement which is false in a

material particular: s 101(1). A person gives information or makes an application in relevant circumstances if he gives or makes it in pursuance of (1) a provision contained in or made under Pt I; or (2) a direction given, notice served or other thing done in pursuance of such a provision: s 101(2). A person who commits an offence under these provisions is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: s 101(3). As to the statutory maximum see PARA 43 note 12. No proceedings may be started for an offence under these provisions except by or with the consent of the Secretary of State or the Director of Public Prosecutions: s 101(4). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq. If an offence under the Transport Act 2000 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of any director, manager, secretary or other similar officer of the body or a person who was purporting to act in such capacity, then he (as well as the body) commits the offence: s 273(1). 'Director', in relation to a body corporate whose affairs are managed by its members, means a member of the body: s 273(2).

11 le a direction under the Transport Act 2000 s 46(1): see the text to notes 9-10.

12 A reference to producing a document includes a reference to producing a legible and intelligible copy of information recorded otherwise than in legible form: Transport Act 2000 s 46(9).

13 Transport Act 2000 s 46(3). A document required or authorised by virtue of Pt I to be served on a person may be served (1) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; (2) if the person is a body corporate, by serving it in accordance with head (1) on the secretary of the body; (3) if the person is a partnership, by serving it in accordance with head (1) on a partner or a person having the control or management of the partnership business: s 100(1). References to serving include references to similar expressions (such as giving or sending): s 100(7). For the purposes of s 100 and the Interpretation Act 1978 s 7 (service of documents by post) (see **STATUTES** vol 44(1) (Reissue) PARA 1388) in its application to the Transport Act 2000 s 100, the proper address of a person on whom a document is to be served is his last known address, except that (a) in the case of service on a body corporate or its secretary, it is the address of the registered or principal office of the body; (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it is the address of the principal office of the partnership: s 100(2). For the purposes of s 100(2), the principal office of a company constituted under the law of a country or territory outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: s 100(3). As to the meaning of 'United Kingdom' see PARA 30 note 1. If a person who is to be served under Pt I with a document by another person has specified to that other person an address within the United Kingdom other than his proper address (as determined under s 100(2)) as the one at which he or someone on his behalf will accept documents of the same description as that document, then in relation to that document that address must be treated as his proper address instead of that determined under s 100(2): s 100(4), (5). The provisions of s 100 do not apply to a document if rules of court make provision about its service: s 100(6).

14 Transport Act 2000 s 46(4), (11).

15 le a notice under the Transport Act 2000 s 46(3): see the text to notes 11-13.

16 Transport Act 2000 s 46(5). A body guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 46(5). As to the standard scale see PARA 50 note 8.

17 A reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form: Transport Act 2000 s 46(10).

18 Transport Act 2000 s 46(6). A body guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine: s 46(6). As to the statutory maximum see PARA 43 note 12.

19 Transport Act 2000 s 46(7). An order under s 46(7) may provide that all the costs or expenses of and incidental to the application are to be borne (1) by the body in default; or (2) if officers of the body are responsible for its default, by those officers: s 46(8).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(i) Schemes/82. Accounting provisions.

82. Accounting provisions.

If any property, rights or liabilities are transferred under a transfer scheme¹ from the Civil Aviation Authority ('CAA')² to a company³, from a company to the CAA, or from one company to another company, the transfer scheme may state the value at which any asset transferred to the transferee⁴ under the scheme is to be entered in the opening accounts of the transferee⁵ and the amount at which any liability so transferred is to be entered in those accounts⁶. The value or amount which may be stated⁷ is (1) in a case where the whole of the asset or liability is transferred by the transfer scheme, the value or amount at which the asset or liability appeared in the last full accounts of the transferor⁸; (2) in a case where part only of the asset or liability is so transferred, such part of the value or amount at which the asset or liability appeared in the last full accounts of the transferor as may be determined by or in accordance with the transfer scheme⁹. However, if the maker of the transfer scheme considers that some other value or amount is appropriate, the value or amount which may be stated¹⁰ is that other amount or value¹¹. If no value or amount appeared¹² in the case of an asset or liability, the value or amount which may be stated¹³ is the value or amount which the maker of the transfer scheme considers appropriate¹⁴. The transfer scheme may provide that the amount to be included in the opening accounts of the transferee as representing its accumulated realised profits is to be determined as if such proportion of any profits realised and retained by the transferor as may be determined by or in accordance with the transfer scheme had been realised and retained by the transferee¹⁵. The transfer scheme may provide that the amount to be included in the opening accounts of the transferee as representing its accumulated realised losses is to be determined as if such proportion of any accumulated realised losses of the transferor as may be determined by or in accordance with the transfer scheme had been losses realised by the transferee¹⁶.

1 As to the meaning of 'transfer scheme' see PARA 78.

2 As to the CAA see PARA 50 et seq.

3 As to the meaning of 'company' see PARA 78 note 5.

4 As to the meaning of 'transferee' see PARA 79 note 10.

5 The opening accounts of the transferee are (1) if the transferee is the CAA, the annual accounts prepared by it in accordance with the Civil Aviation Act 1982 s 15 (see PARA 72) for the accounting year next ending after the transfer date; (2) if the transferee is a company, any statutory accounts prepared by it for the accounting year next ending after the transfer date: Transport Act 2000 s 48(1), (2). An accounting year is (a) in the case of the CAA, the period of 12 months ending with 31 March in any year; (b) in the case of a company, its financial year within the meaning of the Companies Act 1985 (see **COMPANIES** vol 15 (2009) PARA 711): Transport Act 2000 s 48(4). Statutory accounts are accounts prepared by a company for the purpose of any provision of the Companies Act 1985 (including group accounts): Transport Act 2000 s 48(5).

6 Transport Act 2000 s 47(1), (2). When the transfer scheme comes into force, a statement or provision under s 47(2), (6) or (7) has effect to require any value or amount concerned to be entered or determined accordingly: s 47(8).

7 I.e. by virtue of the Transport Act 2000 s 47(2): see the text to notes 4-6.

8 Transport Act 2000 s 47(3)(a). The last full accounts of the transferor are (1) if the transferor is the CAA, the annual accounts prepared by it in accordance with the Civil Aviation Act 1982 s 15 (see PARA 72) for the accounting year last ended before the making of the transfer scheme; (2) if the transferor is a company, the statutory accounts of the company for the accounting year last ended before the making of the transfer scheme: Transport Act 2000 s 48(3). As to the meaning of 'transferor' see PARA 79 note 3.

- 9 Transport Act 2000 s 47(3)(b).
- 10 le by virtue of the Transport Act 2000 s 47(2): see the text to notes 4-6.
- 11 Transport Act 2000 s 47(4).
- 12 le as mentioned in the Transport Act 2000 s 47(3): see the text to notes 7-9.
- 13 le by virtue of the Transport Act 2000 s 47(2): see the text to notes 4-6.
- 14 Transport Act 2000 s 47(5).
- 15 Transport Act 2000 s 47(6). See further note 6.
- 16 Transport Act 2000 s 47(7). See further note 6.

UPDATE

82 Accounting provisions

NOTE 5--Transport Act 2000 s 48(4), (5) amended to refer instead to the Companies Act 2006: SI 2008/948.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(i) Schemes/83. Special provisions about land.

83. Special provisions about land.

A relevant land right (namely (1) a right of reverter; (2) a right of pre-emption; (3) a right of forfeiture; (4) a right of re-entry; (5) a right of irritancy; (6) an option; (7) a right similar to anything falling within heads (1) to (6) above¹) does not operate or become exercisable as a result of a transfer of land². If a relevant land right would have operated in favour of a person or become exercisable by him³, but the circumstances are such that⁴ the right cannot subsequently operate in his favour or become exercisable by him (as the case may be), just compensation is payable to him by the person to whom the land is transferred or the person transferring it (or both) in respect of the right's extinguishment⁵. A dispute about whether or how much compensation is payable, or about the person to or by whom it is payable, must be referred to and decided by an arbitrator⁶. If it appears to the person transferring the land that a person is or may be entitled to compensation he must notify that person in writing that he is or may be entitled, and invite him to make representations to the person transferring the land, and to do so not later than the expiry of the period of 14 days starting with the date of issue of the notification⁷. However, if the person transferring the land is not aware of the name and address of the person concerned, he must publish in such manner as he thinks appropriate a notice containing information about the right affected, and inviting any person who thinks he is or may be entitled to compensation to make representations to the person transferring the land, and to do so within the period specified in the notice⁸.

1 See the Transport Act 2000 s 61(1). See further **EASEMENTS AND PROFITS A PRENDRE; REAL PROPERTY**.

2 See the Transport Act 2000 s 61(2). The text refers to a transfer of land (1) under a transfer scheme; (2) in consequence of anything done under s 63, Sch 6 (see PARA 78); or (3) pursuant to an obligation imposed by a provision included in a scheme by virtue of s 42(4)(a), (b) (see PARA 79): s 61(2). As to the meaning of 'transfer scheme' see PARA 78. In the case of a transfer mentioned in s 61(2), a relevant land right is to have effect as if (a) the person to whom the land is transferred were the same person in law as the person transferring the land; and (b) no transfer of the land had taken place: s 61(3). Section 61(2), (3) applies in relation to the doing of any thing in relation to land (including the grant or creation of an estate or interest in it or right over it) as it applies in relation to a transfer of land; and a reference in s 61 to the person to whom the land is transferred or the person transferring it is to be construed accordingly: s 61(9).

3 I.e. apart from the Transport Act 2000 s 61(2), (3): see note 2.

4 I.e. in consequence of the Transport Act 2000 s 61(2), (3): see note 2.

5 Transport Act 2000 s 61(4), (5).

6 Transport Act 2000 s 61(6). The arbitrator is appointed by the President of the Royal Institution of Chartered Surveyors: s 61(6). See generally **ARBITRATION**.

7 Transport Act 2000 s 61(7).

8 Transport Act 2000 s 61(8). The period specified must be not less than 28 days starting with the date of publication of the notice: see s 61(8).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(ii) Transferee Companies/84. Ownership of transferee companies.

(ii) Transferee Companies

84. Ownership of transferee companies.

If any property, rights or liabilities are transferred under a transfer scheme¹ to a transferee² which at the time of the transfer is (1) a company³ which is wholly owned by the Crown⁴; (2) a company which is wholly owned by the Civil Aviation Authority ('CAA')⁵; or (3) a company which is a wholly owned subsidiary⁶ of a company falling within head (1) or head (2) above, the Secretary of State⁷ may give a direction requiring the transferee to issue to the appropriate person⁸ such securities of the transferee as are specified in the direction, and to do so at a time or times (specified in the direction) when it is a company falling within heads (1) to (3) above, and to do so on such terms as are specified in the direction⁹.

Shares issued in pursuance of such a direction must be of such nominal value as may be specified in a direction given by the Secretary of State; and must be issued as fully paid and treated¹⁰ as if they had been paid up by virtue of the payment to the transferee of their nominal value in cash¹¹.

If any property, rights or liabilities are transferred under a transfer scheme to a transferee which at the time of the transfer is a company falling within heads (1) to (3) above, the Treasury, or the Secretary of State with the Treasury's consent, may acquire securities of the transferee by subscription or purchase or acquire options to acquire or dispose of securities of the transferee¹². The Secretary of State must not dispose of any securities or options acquired in this way without the Treasury's consent¹³.

If any property, rights or liabilities are transferred under a transfer scheme to a transferee which at the time of the transfer is a company falling within heads (1) to (3) above, the Secretary of State may by order designate such a transferee for the purposes of Crown shareholding¹⁴. The Secretary of State must ensure that the Crown does not dispose of any of the shares it holds in the designated company unless (a) he is satisfied that a scheme is in place to ensure the completion of any project which concerns the development of major facilities connected with air traffic services¹⁵, and was commissioned before 1 February 2001¹⁶ by the CAA or a company wholly owned by the CAA¹⁷; (b) the Crown holds at least 49 per cent of the company's issued ordinary share capital immediately before the disposal, and the Crown will continue to hold at least 49 per cent of that share capital immediately after the disposal¹⁸. The Secretary of State must ensure that at any given time the Crown holds at least 25 per cent of the designated company's issued ordinary share capital¹⁹. The Secretary of State must also ensure that the Crown continues to hold any special share²⁰ provided for under the designated company's articles of association²¹. The Secretary of State must not consent to any alteration of the designated company's articles of association which requires his consent on behalf of the Crown as special shareholder unless a statement of the intended consent has been laid before and approved by resolution of each House of Parliament²². The Secretary of State may by order amend or repeal the provisions relating to Crown shareholding²³. No such order is to be made unless a draft has been laid before and approved by resolution of each House of Parliament²⁴.

1 As to the meaning of 'transfer scheme' see PARA 78.

2 As to the meaning of 'transferee' see PARA 79 note 10.

3 As to the meaning of 'company' see PARA 78 note 5.

4 As to the meaning of 'company wholly owned by the Crown' see PARA 78 note 5.

5 As to the CAA see PARA 50 et seq. As to the meaning of 'company wholly owned by the CAA' see PARA 78 note 6.

6 As to the meaning of 'wholly owned subsidiary' see PARA 78 note 6.

7 As to the Secretary of State see PARA 33.

8 The appropriate person is such of the following as the Secretary of State may specify in the direction (1) the transferor; (2) the Secretary of State; (3) the CAA; (4) a company which is wholly owned by the Crown; (5) a company which is wholly owned by the CAA; (6) a company which is a wholly owned subsidiary of a company falling within head (4) or head (5): Transport Act 2000 s 49(5).

The Treasury or the Secretary of State with the Treasury's approval may for the purposes of s 49, s 50 (see the text and notes 12-13) or s 58 (see PARA 91) appoint a person to act as the nominee, or one of the nominees, of the Treasury or the Secretary of State: s 62(1). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) paras 512-517. In accordance with directions given from time to time by the Treasury or by the Secretary of State (a) securities may be issued under s 49 or s 58 to a nominee of the Secretary of State appointed for the purposes of that provision; and (b) a nominee of the Treasury or the Secretary of State appointed for the purposes of s 50 may acquire securities under that provision: s 62(2). A person holding any securities as a nominee of the Treasury or the Secretary of State must hold and deal with them (or any of them) on such terms and in such manner as may be specified in directions given by the Treasury or the Secretary of State: s 62(3). A direction of the Secretary of State under s 62(2) or s 62(3) requires the Treasury's consent: s 62(4).

9 Transport Act 2000 s 49(1)-(4). If a security is issued to a company in pursuance of s 49, then for the purposes of its statutory accounts, the value of the security when issued must be taken to have been equal to (1) its nominal value (if it is a share); (2) the principal sum payable under it (if it is a debenture): s 59(1). Statutory accounts, including group accounts, are accounts prepared by a company for the purpose of any provision of the Companies Act 1985 (see **COMPANIES** vol 15 (2009) PARA 693 et seq): Transport Act 2000 s 59(5). The nominal value or principal sum must be taken to be accumulated realised profits for the purposes of the company's statutory accounts: s 59(2). If a direction under s 49 requires a company to issue a debenture, the direction may specify (a) the principal sum payable under the debenture; (b) the terms as to the payment of the principal sum; (c) the terms as to the payment of interest on the principal sum: s 59(3). The principal sum payable under the debenture, and the terms as to the payment of it and of interest on it, must be taken to be those so specified: s 59(4).

10 Ie for the purposes of the Companies Act 1985.

11 Transport Act 2000 s 49(6).

12 Transport Act 2000 s 50(1), (2). See note 8.

13 Transport Act 2000 s 50(3). See note 8.

14 Transport Act 2000 s 51(1), (2). See the Transport Act 2000 (Designation of Transferee) Order 2001, SI 2001/1292. As to orders see further PARA 34 note 4.

15 A project concerns the development of major facilities if (and only if) the Secretary of State thinks that the value of the project is above £200m: Transport Act 2000 s 51(11). As to the meaning of 'air traffic services' see PARA 34 note 4.

16 Ie before the coming into force of the Transport Act 2000 s 51.

17 Transport Act 2000 s 51(3). As to the meaning of 'shares held by the Crown' see PARA 78 note 5. Grounds on which the Secretary of State may be satisfied that a scheme is in place as mentioned in s 51(3) include the grounds that the arrangements for the disposal of the shares include provision obliging the person acquiring them to ensure the completion of the project: s 51(10). See further note 21.

18 Transport Act 2000 s 51(4). See further note 21.

19 Transport Act 2000 s 51(5). See further note 21.

20 A special share is a share which can be held only by the Crown and which gives the shareholder the right to prevent certain events by withholding consent: Transport Act 2000 s 51(7).

21 Transport Act 2000 s 51(6). If a person enters into a transaction relating to shares issued by the designated company (1) he need not inquire whether the transaction results in a contravention of s 51(3), (4), (5) or (6) (see the text to notes 15-20); and (2) his rights in relation to the shares are not to be questioned on the grounds of, or affected by, a contravention of s 51(3), (4), (5) or (6): s 51(9).

22 Transport Act 2000 s 51(8).

23 Transport Act 2000 s 51(12). The provisions referred to in the text are those of s 51: see the text and notes 14-22.

24 Transport Act 2000 s 103(6). If a draft of an order under s 51 (see the text and notes 14-23) would otherwise be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument: s 103(13).

UPDATE

84 Ownership of transferee companies

NOTE 9--Transport Act 2000 s 59(5) amended to refer instead to the Companies Act 2006: SI 2008/948.

NOTES 10, 11--Transport Act 2000 s 49(6) amended: SI 2009/1941.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(ii) Transferee Companies/85. Loans.

85. Loans.

Where any property, rights or liabilities are transferred under a transfer scheme¹ to a transferee² which at the time of the transfer is (1) a company³ which is wholly owned by the Crown⁴; (2) a company which is wholly owned by the Civil Aviation Authority ('CAA')⁵; or (3) a company which is a wholly owned subsidiary⁶ of a company falling within head (1) or head (2) above, then with the Treasury's⁷ approval the Secretary of State⁸ may make loans of such amounts as he thinks fit to the transferee, if when the loans are made it is a company falling within heads (1) to (3) above⁹. If loans are made they must be repaid to the Secretary of State at such times and by such methods as he may specify in a direction given with the Treasury's approval, and interest on them must be paid to him at such rates and at such times as may be specified in the direction¹⁰. The Secretary of State must exercise his powers so as to ensure that the aggregate of the amounts outstanding in respect of the principal of loans made does not at any time exceed £1,000 million¹¹.

In respect of each financial year the Secretary of State must prepare, in such form as may be specified in a direction given by the Treasury, an account of sums issued to him out of the National Loans Fund¹² for making such loans, sums received by him¹³, and how he has disposed of those sums¹⁴. The Secretary of State must send the account to the Comptroller and Auditor General¹⁵ not later than the end of the month of August in the following financial year¹⁶. The Comptroller and Auditor General must examine, certify and report on the account and must lay copies of it and of his report before each House of Parliament¹⁷.

1 As to the meaning of 'transfer scheme' see PARA 78.

2 As to the meaning of 'transferee' see PARA 79 note 10.

3 As to the meaning of 'company' see PARA 78 note 5.

4 As to the meaning of 'company wholly owned by the Crown' see PARA 78 note 5.

5 As to the CAA see PARA 50 et seq. As to the meaning of 'company wholly owned by the CAA' see PARA 78 note 6.

6 As to the meaning of 'wholly owned subsidiary' see PARA 78 note 6.

7 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

8 As to the Secretary of State see PARA 33.

9 Transport Act 2000 s 52(1)-(3).

10 Transport Act 2000 s 52(4). As to directions see further PARA 80.

11 Transport Act 2000 s 52(5).

12 As to the National Loans Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 727 et seq.

13 Ie under the Transport Act 2000 s 52(4): see the text to note 10.

14 Transport Act 2000 s 52(6).

15 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

16 Transport Act 2000 s 52(7).

17 Transport Act 2000 s 52(8).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(ii) Transferee Companies/86. Guarantees.

86. Guarantees.

Where any property, rights or liabilities are transferred under a transfer scheme¹ to a transferee² which at the time of the transfer is (1) a company³ which is wholly owned by the Crown⁴; (2) a company which is wholly owned by the Civil Aviation Authority ('CAA')⁵; or (3) a company which is a wholly owned subsidiary⁶ of a company falling within head (1) or head (2) above, the Treasury⁷ or the Secretary of State⁸ may guarantee the discharge of any financial obligation of the transferee if when the guarantee is made it is a company falling within heads (1) to (3) above⁹. In the case of a financial obligation incurred before the giving of a guarantee, it is immaterial when the obligation was incurred¹⁰. A guarantee may be given on such terms and in such manner as the Treasury or the Secretary of State decides¹¹. A guarantee may continue to have effect after the transferee has ceased to be a company falling within heads (1) to (3) above¹². The Treasury may not give a guarantee in relation to a financial obligation which is owed by the transferee to the Secretary of State¹³. A guarantee may not be given unless the Treasury or the Secretary of State has entered into arrangements under which the transferee will be liable to make payments (including payments of interest) in respect of sums issued in fulfilment of the guarantee¹⁴. The Treasury and the Secretary of State must exercise their powers so as to ensure that the aggregate of the amounts of principal in relation to which guarantees are given does not at any time exceed £500 million¹⁵. As soon as practicable after giving a guarantee, the Treasury or the Secretary of State must lay a statement of the guarantee before each House of Parliament¹⁶. As soon as practicable after issuing a sum in fulfilment of a guarantee the Treasury or the Secretary of State must lay a statement relating to the sum before each House of Parliament¹⁷.

1 As to the meaning of 'transfer scheme' see PARA 78.

2 As to the meaning of 'transferee' see PARA 79 note 10.

3 As to the meaning of 'company' see PARA 78 note 5.

4 As to the meaning of 'company wholly owned by the Crown' see PARA 78 note 5.

5 As to the CAA see PARA 50 et seq. As to the meaning of 'company wholly owned by the CAA' see PARA 78 note 6.

6 As to the meaning of 'wholly owned subsidiary' see PARA 78 note 6.

7 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

8 As to the Secretary of State see PARA 33.

9 Transport Act 2000 s 53(1)-(3).

10 Transport Act 2000 s 53(4).

11 Transport Act 2000 s 53(5).

12 Transport Act 2000 s 53(6).

13 Transport Act 2000 s 53(7).

14 Transport Act 2000 s 53(8). If a payment is not made as required by arrangements under s 53(8), as soon as practicable after the default occurs the Treasury or the Secretary of State (depending on who made the arrangements) must lay a statement of the default before each House of Parliament: s 53(12).

- 15 Transport Act 2000 s 53(9).
- 16 Transport Act 2000 s 53(10).
- 17 Transport Act 2000 s 53(11).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(ii) Transferee Companies/87. Grants.

87. Grants.

Where any property, rights or liabilities are transferred under a transfer scheme¹ to a transferee² which at the time of the transfer is (1) a company³ which is wholly owned by the Crown⁴; (2) a company which is wholly owned by the Civil Aviation Authority ('CAA')⁵; or (3) a company which is a wholly owned subsidiary⁶ of a company falling within head (1) or head (2) above, then with the Treasury's⁷ approval the Secretary of State⁸ may make grants towards the transferee's expenditure, if when the grants are made, it is a company falling within heads (1) to (3) above⁹. Grants may be of such amounts and may be made at such times and in such manner and subject to such conditions as the Secretary of State may determine with the Treasury's approval¹⁰. Grants may be retained by the transferee after it has ceased to be a company falling within heads (1) to (3) above (subject to any condition imposed by the Secretary of State)¹¹.

1 As to the meaning of 'transfer scheme' see PARA 78.

2 As to the meaning of 'transferee' see PARA 79 note 10.

3 As to the meaning of 'company' see PARA 78 note 5.

4 As to the meaning of 'company wholly owned by the Crown' see PARA 78 note 5.

5 As to the CAA see PARA 50 et seq. As to the meaning of 'company wholly owned by the CAA' see PARA 78 note 6.

6 As to the meaning of 'wholly owned subsidiary' see PARA 78 note 6.

7 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

8 As to the Secretary of State see PARA 33.

9 Transport Act 2000 s 54(1)-(3).

10 Transport Act 2000 s 54(4), (5).

11 Transport Act 2000 s 54(6).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(ii) Transferee Companies/88. Trustee investments.

88. Trustee investments.

If (1) any property, rights or liabilities are transferred under a transfer scheme¹ to a transferee² which at the time of the transfer is a company wholly owned by the Crown³; (2) at a time after the transfer the transferee is a company whose shares or debentures are included in the Official List⁴; and (3) immediately before its shares or debentures are admitted to the Official List the transferee is wholly owned by the Crown⁵, then the transferee is taken to have paid a dividend for the purposes of the Trustee Investments Act 1961⁶.

1 As to the meaning of 'transfer scheme' see PARA 78.

2 As to the meaning of 'transferee' see PARA 79 note 10.

3 Transport Act 2000 s 55(1)(a). As to the meaning of 'company wholly owned by the Crown' see PARA 78 note 5; and as to the meaning of 'company' see PARA 78 note 5.

4 Transport Act 2000 s 55(1)(b), (2).

5 Transport Act 2000 s 55(1)(c), (3).

6 Transport Act 2000 s 55(4). Section 55(5) has effect for the purpose of applying the Trustee Investments Act 1961 s 1, Sch 1 Pt IV para 3(b) (dividends to be paid in each of the five years immediately preceding investment year) in relation to investment in shares or debentures of the transferee in the year of issue or any later year: Transport Act 2000 s 55(4). The transferee must be taken to have paid a dividend as mentioned in the Trustee Investments Act 1961 Sch 1 Pt IV para 3(b): (1) in every year which precedes the year of issue and which is included in the relevant five years; and (2) in the year of issue, if it is included in the relevant five years and the transferee does not in fact pay such a dividend in that year: Transport Act 2000 s 55(5). The year of issue is the calendar year in which shares in the transferee are first issued in pursuance of s 49 (see PARA 84); and the relevant five years are the five years immediately preceding the year in which the investment in question is made or proposed to be made: s 55(6). See **TRUSTS** vol 48 (2007 Reissue) PARA 1023.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(ii) Transferee Companies/89. Shadow directors.

89. Shadow directors.

If (1) any property, rights or liabilities are transferred under a transfer scheme¹ to a transferee² which at the time of the transfer is (a) a company³ which is wholly owned by the Crown⁴; (b) a company which is wholly owned by the Civil Aviation Authority ('CAA')⁵; or (c) a company which is a wholly owned subsidiary⁶ of a company falling within head (a) or head (b) above; and (2) at a time after the transfer (a) the transferee continues to be, or becomes and continues to be, a company which is wholly owned by the Crown or a wholly owned subsidiary of such a company; or (b) the Crown continues to hold any special share⁷ provided for under the transferee's articles of association, then for the purposes of company legislation⁸ certain persons⁹ are not to be regarded as shadow directors of the transferee or of a company associated with the transferee¹⁰.

1 As to the meaning of 'transfer scheme' see PARA 78.

2 As to the meaning of 'transferee' see PARA 79 note 10.

3 As to the meaning of 'company' see PARA 78 note 5.

4 As to the meaning of 'company wholly owned by the Crown' see PARA 78 note 5.

5 As to the CAA see PARA 50 et seq. As to the meaning of 'company wholly owned by the CAA' see PARA 78 note 6.

6 As to the meaning of 'wholly owned subsidiary' see PARA 78 note 6.

7 A special share is a share which can be held only by the Crown and which gives the shareholder the right to prevent certain events by withholding consent: Transport Act 2000 s 56(9).

8 I.e. the Companies Act 1985 s 288 (register of directors: see **COMPANIES** vol 14 (2009) PARA 499), s 305 (directors' names on correspondence etc: see **COMPANIES** vol 14 (2009) PARA 221), s 317 (disclosure of interests in contracts: see **COMPANIES** vol 14 (2009) PARAS 555, 560), the Companies Act 2006 ss 190-196 (transactions requiring members' approval: property transactions: see **COMPANIES** vol 14 (2009) PARA 564 et seq), and ss 197-214 (transactions requiring members' approval: loans etc: see **COMPANIES** vol 14 (2009) PARA 568 et seq); Transport Act 2000 s 56(5) (substituted by SI 2007/2194).

9 I.e. a Minister of the Crown, or his nominee: see the Transport Act 2000 s 56(8).

10 Transport Act 2000 s 56(1)-(4) (s 56(4) substituted by SI 2007/2194). A company is associated with the transferee if (1) the company is designated for the purposes of s 56(11) by an order of the Secretary of State; and (2) the company is wholly owned by the Crown, or a subsidiary of the transferee: s 56(10)-(12). See the Transport Act 2000 (Designation of Companies) Order 2001, SI 2001/321. As to orders see further PARA 34 note 4.

UPDATE

89 Shadow directors

NOTE 8--Transport Act 2000 s 56(5) substituted: SI 2009/1941.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(ii) Transferee Companies/90. Extinguishment of liabilities.

90. Extinguishment of liabilities.

With the consent of the Treasury¹, the Secretary of State² may give a direction to the Civil Aviation Authority ('CAA')³ if he thinks that to do so would be appropriate in connection with a transfer scheme⁴ which has been or is proposed to be made⁵. A direction may be given in relation to a company which is wholly owned by the CAA⁶ when the direction is given, and it may require the CAA⁷ (1) to release the company from liability in respect of debts which the company owes to the CAA and which are specified in the direction⁸; (2) to do so at a time when the company is wholly owned by the CAA⁹; and (3) to become a party to such arrangements as the direction may specify with a view to the release taking effect¹⁰. A direction has effect to require the CAA to act in accordance with it even if to do so would not be in furtherance of the CAA's functions arising apart from these provisions¹¹. Where a direction is given, the Secretary of State may by order extinguish the CAA's liability if¹² (a) the CAA owes the debts to him¹³; (b) he thinks that such debts correspond to those specified in the direction¹⁴; and (c) such debts are specified in the order¹⁵. A direction or order may relate to liability for principal only¹⁶. The power to make an order under the provisions described above is exercisable only with the Treasury's consent¹⁷.

1 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

2 As to the Secretary of State see PARA 33.

3 As to the CAA see PARA 50 et seq.

4 As to the meaning of 'transfer scheme' see PARA 78.

5 Transport Act 2000 s 57(1). As to directions see further PARA 80.

6 As to the meanings of 'company' see PARA 78 note 5. As to the meaning of 'company wholly owned by the CAA' see PARA 78 note 6.

7 Transport Act 2000 s 57(2).

8 Transport Act 2000 s 57(2)(a).

9 Transport Act 2000 s 57(2)(b).

10 Transport Act 2000 s 57(2)(c). A direction may by virtue of s 57(2)(c) include provision as to instruments, their form and the time they are to be made: s 57(3).

11 Transport Act 2000 s 57(4).

12 Transport Act 2000 s 57(5). In exercise of this power, the Transport Act 2000 (Extinguishment of Loans) (Civil Aviation Authority) Order 2001, SI 2001/755, has been made.

13 Transport Act 2000 s 57(5)(a).

14 Transport Act 2000 s 57(5)(b).

15 Transport Act 2000 s 57(5)(c).

16 Transport Act 2000 s 57(6).

17 Transport Act 2000 s 103(10). As to orders see further PARA 34 note 4.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/2. ADMINISTRATION AND FINANCE/(5) TRANSFER SCHEMES/(ii) Transferee Companies/91. Securities to be issued.

91. Securities to be issued.

With the consent of the Treasury¹, the Secretary of State² may give one or more directions if he thinks that to do so would be appropriate in connection with a direction which has been given in relation to extinguishment of liabilities³. A direction may be given to (1) the company⁴ whose liability is to be extinguished⁵; (2) a company which wholly owns that company⁶; (3) a company which is a wholly owned subsidiary of a company falling within head (1) or head (2) above⁷. A direction may require the company to issue to the appropriate person⁸, or to different appropriate persons, specified in the direction such securities of the company as the direction specifies⁹. Different directions may be given to the same company, and different directions may be given to different companies¹⁰.

A company which is given a direction must issue securities in accordance with it¹¹. Securities must be issued at such times and on such terms as the direction concerned specifies¹². Shares issued must be of such nominal value as the direction concerned specifies¹³, and must be issued as fully paid and treated¹⁴ as if they had been paid up by virtue of the payment to the issuing company of their nominal value in cash¹⁵.

1 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

2 As to the Secretary of State see PARA 33.

3 Transport Act 2000 s 58(1). Directions in relation to extinguishment of liabilities are given under s 57: see PARA 90. As to directions see further PARA 80.

4 As to the meaning of 'company' see PARA 78 note 5.

5 Transport Act 2000 s 58(2), (3)(a). Liability is extinguished under s 57: see PARA 90. A company does not fall within s 58(3) unless (1) it is wholly owned by the Crown when the direction under s 58 is given; or (2) it is a wholly owned subsidiary of a company which is wholly owned by the Crown when the direction under s 58 is given: s 58(5). As to the meaning of 'company wholly owned by the Crown' see PARA 78 note 5.

6 Transport Act 2000 s 58(2), (3)(b). A company which wholly owns another company is a company of which the other is a wholly owned subsidiary: s 65(1)(b), (7). As to the meanings of 'subsidiary' and 'wholly owned subsidiary' see PARA 78 note 6. See further note 5.

7 Transport Act 2000 s 58(2), (3)(c). See further note 5.

8 Appropriate persons are (1) the Secretary of State; (2) the company whose liability the direction under the Transport Act 2000 s 57 (see PARA 90) requires to be released; (3) a company which wholly owns that company: s 58(4). A company is not an appropriate person, unless (a) it is wholly owned by the Crown when the direction under s 58 is given; or (b) it is a wholly owned subsidiary of a company which is wholly owned by the Crown when the direction under s 58 is given: s 58(5). As to the exercise of the Secretary of State's functions through nominees see PARA 84 note 8.

9 Transport Act 2000 s 58(2)(a), (b). If a security is issued to a company in pursuance of s 58, then for the purposes of its statutory accounts the value of the security when issued must be taken to have been equal to (1) its nominal value (if it is a share); (2) the principal sum payable under it (if it is a debenture): s 59(1). Statutory accounts are accounts, including group accounts, prepared by a company for the purpose of any provision of the Companies Act 1985 (see **COMPANIES** vol 15 (2009) PARA 708 et seq): Transport Act 2000 s 59(5). The nominal value or principal sum must be taken to be accumulated realised profits for the purposes of the company's statutory accounts: s 59(2). If a direction under s 58 requires a company to issue a debenture, the direction may specify (a) the principal sum payable under the debenture; (b) the terms as to the payment of the principal sum; (c) the terms as to the payment of interest on the principal sum: s 59(3). The principal sum payable under the debenture, and the terms as to the payment of it and of interest on it, must be taken to be those so specified: s 59(4).

- 10 Transport Act 2000 s 58(6).
- 11 Transport Act 2000 s 58(7).
- 12 Transport Act 2000 s 58(8).
- 13 Transport Act 2000 s 58(9)(a).
- 14 le for the purposes of the Companies Act 1985.
- 15 Transport Act 2000 s 58(9)(b).

UPDATE

91 Securities to be issued

NOTE 9--Transport Act 2000 s 59(5) amended to refer instead to the Companies Act 2006: SI 2008/948.

NOTES 14, 15--Transport Act 2000 s 58(9)(b) amended: SI 2009/1941.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(1) LICENSING FUNCTIONS UNDER AIR NAVIGATION ORDERS/92. Licensing regulations.

3. LICENSING

(1) LICENSING FUNCTIONS UNDER AIR NAVIGATION ORDERS

92. Licensing regulations.

The Secretary of State¹ has power to make regulations² to regulate the conduct of the Civil Aviation Authority ('CAA')³, and in particular to regulate the procedure to be followed by it in connection with the performance of its functions under air navigation orders⁴, namely the registration of aircraft, the issuing of certificates, licences, approvals, ratings and directions and the receiving of reports of reportable occurrences⁵. The procedure to be followed in relation to air transport licensing and route licensing⁶ is also regulated⁷.

1 As to the Secretary of State see PARA 33.

2 As to the regulations made under this power see the Civil Aviation Authority Regulations 1991, SI 1991/1672; and PARA 93 et seq.

3 As to the CAA see PARA 50 et seq.

4 As to air navigation orders see PARA 353.

5 See the Civil Aviation Act 1982 s 7(2); the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6; and PARAS 93-97. As to the regulation of aircraft safety see also the Civil Aviation Act 1982 s 85; and PARAS 524-529. As to reportable occurrences see PARA 583.

6 As to air transport licensing and route licensing functions see PARA 272.

7 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, regs 15-31; and PARA 106 et seq. See also the Civil Aviation Act 1982 ss 64-68, s 69A; and PARA 98 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(1)
LICENSING FUNCTIONS UNDER AIR NAVIGATION ORDERS/93. Scope of functions.

93. Scope of functions.

Regulations provide for the regulation of the conduct of the Civil Aviation Authority ('CAA')¹ and other persons in connection with the performance by the CAA of the following functions²:

- 58 (1) the registration of aircraft³;
- 59 (2) the certification of operators of aircraft⁴;
- 60 (3) the certification of airworthiness of aircraft⁵;
- 61 (4) noise certification⁶;
- 62 (5) the certification of compliance with the requirements for the emission by aircraft engines of unburned hydrocarbons⁷;
- 63 (6) personnel licensing⁸;
- 64 (7) the licensing of aerodromes⁹;
- 65 (8) the validation of any certificate or licence¹⁰;
- 66 (9) the approval of equipment and the approval or authorisation of persons¹¹;
- 67 (10) the approval of schemes for the regulation of the flight times of aircraft crew¹²;
- 68 (11) the receipt of reports of reportable occurrences¹³;
- 69 (12) the making of air traffic directions¹⁴; and
- 70 (13) the making of airspace policy directions¹⁵.

1 As to the CAA see PARA 50 et seq.

2 I.e. the Civil Aviation Authority Regulations 1991, SI 1991/1672, made under the Civil Aviation Act 1982 s 7(2) (see PARAS 50, 92).

3 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(a). As to the registration and marking of aircraft see PARAS 367-374.

4 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(b). As to air operator's certificates see PARAS 99-100.

5 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(c). As to certificates of airworthiness see PARAS 376-384.

6 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(d). As to noise certificates see PARA 396 et seq. As to noise and vibration generally see PARAS 259-264.

7 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(e). As to certificates as to aircraft engine emissions see PARAS 388-395.

8 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(f). As to personnel licensing see PARAS 438-455.

9 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(g). As to licensed aerodromes see PARA 226.

10 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(h). As to the validation of licences see PARA 452.

11 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(i). As to the equipment of aircraft see PARA 410 et seq. As to aircraft crew see PARA 438 et seq.

12 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(j). As to schemes regulating the flight times of aircraft crew see PARA 464.

13 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(k). As to reportable occurrences PARAS 582-584.

14 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(l) (added by SI 2001/2448). As to air traffic directions see PARA 546.

15 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(1)(m) (added by SI 2001/2448). As to airspace policy directions see PARA 546.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(1) LICENSING FUNCTIONS UNDER AIR NAVIGATION ORDERS/94. Decision on application.

94. Decision on application.

A decision in relation to the registration of an aircraft, or to the grant of a certificate, licence, approval, authorisation or rating¹, or a decision to make an air traffic direction or an airspace policy direction, may be made on behalf of the Civil Aviation Authority ('CAA')² only by a member or employee of the CAA³.

In the event of a refusal to register an aircraft because it would be inexpedient in the public interest for the aircraft to be registered in the United Kingdom⁴ or where the CAA refuses to grant, validate or vary a certificate, licence, approval, authorisation or rating, or grants an application in terms different from those applied for, the CAA must serve⁵ on the applicant a notice stating the reasons for the decision; within 14 days from the service of the notice the applicant may request a review by the CAA⁶.

Notice of a proposal to:

- 71 (1) cancel the registration of an aircraft⁷;
- 72 (2) revoke, suspend or vary a certificate, licence, approval, authorisation, validation or rating otherwise than on the application of the holder⁸; or
- 73 (3) make an air traffic direction or an airspace policy direction⁹,

must be served, together with the reasons for such a proposal, on the person concerned¹⁰, who may, within 14 days after the date of service of the notice, serve on the CAA a request that the case be decided by the CAA and not by any other person on its behalf¹¹.

1 'Rating' means a rating on a personnel licence; and 'personnel licence' means a licence authorising a person to act as a member of a flight crew (see PARA 457), an aircraft maintenance engineer (see PARA 409), an air traffic controller (see PARA 162), a student air traffic controller (see PARA 163) or an aerodrome flight information service officer (see PARA 164): Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 3(1).

2 As to the CAA see PARA 50 et seq.

3 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(2) (amended by SI 2001/2448). This provision is expressed to be subject to the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(8) (see PARA 97): see reg 6(2) (as so amended). Nothing in reg 6(2), (3) or (4) applies:

- 6 (1) in respect of a medical certificate or certificate of test or experience relating to a personnel licence (although there is a right to request a determination that the relevant test was properly conducted: see reg 6(5); and PARA 95) (reg 6(9)(a));
- 7 (2) where pursuant to its duty under the Civil Aviation Act 1982 s 5, the CAA refuses an application for the grant of an aerodrome licence or grants such an application in terms other than those requested by the applicant or proposes to revoke, suspend or vary an aerodrome licence otherwise than on the application of the holder (Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(9)(b)).

As to aerodrome licences see PARAS 226-227.

4 As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 A document may be served on a person by delivering it to him, by leaving it at his proper address, by post, or by telex or similar means, and where the person is a body corporate the document may be served on its secretary: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 4(1) (amended by SI 2001/2448). However, anything which is required to be served on the CAA may be served electronically by sending it to an e-mail address which it has published for the purpose or in accordance with the Civil Aviation

Authority Regulations 1991, SI 1991/1672, reg 4: reg 31A(5)(d) (added by SI 2001/2448). A person's proper address is his last known address or, in the case of a body corporate, its registered or principal office: Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 4(2).

6 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(3). This provision is expressed to be subject to reg 6(8) (see PARA 97) and reg 6(9) (see note 3): see reg 6(3). Nothing in reg 6(3) or (4) applies where the CAA (1) refuses an application by the holder of an aerodrome licence for the substitution of an ordinary aerodrome licence for a public use aerodrome licence; or (2) proposes, otherwise than on the application of the licence holder, to substitute a public use aerodrome licence for an ordinary aerodrome licence: reg 6(10).

7 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(4)(a).

8 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(4)(b).

9 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(4)(b) (amended by SI 2001/2448).

10 'Person concerned' means (1) in relation to aircraft registration, the applicant for registration or the person in whose name the aircraft is registered; and (2) in relation to a certificate, licence, approval, authorisation, validation or rating, the holder or former holder of, or applicant for, the certificate, licence, approval, authorisation, validation or rating; and (3) in relation to making air traffic directions or airspace policy directions, the person who has been directed: Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 3(1) (amended by SI 2001/2448).

11 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(4) (amended by SI 2001/2448). This provision is expressed to be subject to the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(8) (see PARA 97), reg 6(9) (see note 3), reg 6(10) (see note 6): see reg 6(4) (as so amended).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(1) LICENSING FUNCTIONS UNDER AIR NAVIGATION ORDERS/95. Failure of test or examination.

95. Failure of test or examination.

A person notified of his failure of a test or examination for a personnel licence¹ may within 14 days from service of the notification² request the Civil Aviation Authority ('CAA')³ to determine whether the test or examination was properly conducted⁴. Appeal lies to the county court⁵ from the CAA's decision that a person is not a fit person to hold a personnel licence⁶, but no appeal lies from a decision that a person is not qualified to hold the licence by reason of any deficiency in his knowledge, experience, competence, skill or physical or mental fitness⁷.

1 As to the meaning of 'personnel licence' see PARA 94 note 1.

2 See PARA 94.

3 As to the CAA see PARA 50 et seq.

4 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(5).

5 As to appeals generally see CPR 52; *Practice Direction--Appeals* PD 52; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1657 et seq.

6 See the Air Navigation Order 2005, SI 2005/1970, art 154(1). The CAA must be a respondent to any appeal: art 154(5). The CAA's decision is deemed to have been taken on the day on which it furnished a statement of its reasons for the decision to the applicant, the holder or former holder, as the case may be: see art 154(6).

7 See the Air Navigation Order 2005, SI 2005/1970, art 154(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(1) LICENSING FUNCTIONS UNDER AIR NAVIGATION ORDERS/96. Review of decision by the Civil Aviation Authority.

96. Review of decision by the Civil Aviation Authority.

The function of deciding a case where a request for review has been duly served on the Civil Aviation Authority ('CAA')¹ is a function which may not be performed on behalf of the CAA by any other person; for the purpose of making a decision in such a case, the quorum of the CAA is one member². The CAA may appoint technical assessors to sit with it³. Before reaching its decision the CAA must consider any representations which may have been served⁴ upon it by the persons concerned⁵ within 21 days after the date of service of notice of the original decision; and, where a person concerned has requested the opportunity to make oral representations, the CAA must afford him an opportunity to make such representations and consider them⁶. When the CAA makes a decision in such a case, it must furnish to the person concerned a statement of its reasons for the decision⁷.

1 See under the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(3)-(5): see PARAS 94-95. As to the CAA see PARA 50 et seq.

2 See the Civil Aviation Act 1982 s 7(1); and the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(6)(a).

3 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(6)(b). No person who participated in the decision or proposal or in giving or assessing the test or examination which is to be the subject of the CAA's decision may be appointed as an assessor: reg 6(6)(b).

4 As to service of documents see PARA 94 note 5.

5 As to the meaning of 'person concerned' see PARA 94 note 10.

6 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(7) (substituted by SI 2001/2448). An oral hearing must be held in public except where the CAA is satisfied that, in the interests of morals, public order, national security, juveniles or the protection of the private lives of the parties, a private hearing is required, or where it considers that publicity would prejudice the interests of justice: Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(7A)(a) (reg 6(7A) added by SI 2001/2448). Whether or not the hearing of an appeal is in private, a member of the Administrative Justice and Tribunals Council and any other person which the CAA, with the consent of the parties, permits to attend, is entitled to attend: Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(7A)(b) (as so added). Note that while the text of reg 6(7A) refers to the Council on Tribunals, this Council has in fact been abolished and replaced by the Administrative Justice and Tribunals Council: see the Tribunals, Courts and Enforcement Act 2007 ss 44, 45; and **ADMINISTRATIVE LAW**.

7 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 7.

UPDATE

96 Review of decision by the Civil Aviation Authority

NOTE 6--SI 1991/1672 reg 6(7A)(b) substituted: SI 2008/2683.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(1) LICENSING FUNCTIONS UNDER AIR NAVIGATION ORDERS/97. Exceptions.

97. Exceptions.

The provisions regulating the conduct of the Civil Aviation Authority ('CAA')¹ do not prevent it from provisionally cancelling the registration of an aircraft, or from provisionally suspending or varying any certificate, licence, approval, authorisation, validation or rating², or from making a provisional air traffic direction pending inquiry into or consideration of the case³. The provisions do not apply to the variation of any document incorporated by reference in a certificate of airworthiness⁴, or where, following a direction given by the Secretary of State, the CAA refuses to register or cancels or amends a registration of aircraft or refuses to grant, grants in different terms, revokes, suspends or varies a certificate, licence, approval, authorisation or rating⁵.

1 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6; and PARAS 94-96. As to the CAA see PARA 50 et seq. There are specific exceptions from the regulation of conduct of the CAA in relation to reg 6(2), (3), (4): see PARA 94.

2 As to the meaning of 'rating' see PARA 94 note 1.

3 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(8)(a) (amended by SI 2001/2448).

4 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(8)(b). As to certificates of airworthiness see PARA 376 et seq.

5 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(8)(c).

UPDATE

97 Exceptions

TEXT AND NOTES--SI 1992/2993 revoked: see now Operation of Air Services in Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(i) Introduction/98. System of licensing of air carriers.

(2) LICENSING OF AIR CARRIERS

(i) Introduction

98. System of licensing of air carriers.

The system of licensing of air carriers is governed by both European Community and United Kingdom domestic legislation¹. There are three types of licences which may be granted to United Kingdom air operators²: operating licences³, air transport licences⁴, and route licences⁵. Provision is also made for air carriers subject to an operating ban within the European Community⁶.

1 See the Civil Aviation Act 1982; the Civil Aviation Authority Regulations, SI 1991/1672; EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) on licensing of air carriers (as it has effect in accordance with the Agreement on the European Economic Area (Oporto, 2 May 1992; Cm 2073 (OJ L1, 3.1.94, p 3)) as adjusted by the Protocol (Brussels, 17 March 1993; Cm 2183 (OJ L1, 3.1.94, p 572)) (the 'EEA Agreement'), as amended by Decision of the EEA Joint Committee No 7/94 of 21 March 1994 amending Protocol 47 and certain Annexes to the EEA Agreement; and in accordance with the Decision of the Council, and of the Commission as regards the Agreement on Scientific and Technological co-operation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation, in so far as it applies to the Agreement between the European Community and the Swiss Confederation on Air Transport); EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) on access for Community air carriers to intra-Community air routes (as it has effect in accordance with the EEA Agreement (as amended by Decision of the EEA Joint Committee No 7/94 of 21 March 1994 amending Protocol 47 and certain Annexes to the EEA Agreement); and in accordance with the Decision of the Council, and of the Commission as regards the Agreement on Scientific and Technological co-operation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation, in so far as it applies to the Agreement between the European Community and the Swiss Confederation on Air Transport); the Licensing of Air Carriers Regulations 1992, SI 1992/2992 (see PARA 101); and the Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993 (see PARA 105).

See also the Official Record of the Civil Aviation Authority ('CAA'), which contains any notice or other matter (not being a schedule of terms referred to in the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 18 (see PARA 118)) required to be published by the Civil Aviation Authority Regulations 1991, SI 1991/1672, or by the Civil Aviation Act 1982 s 11(2) (see PARA 69), s 64(3), s 65(1) or (6) (see PARA 117) or s 85(1) (repealed): see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 5. Where the CAA is required to publish any information it may do so electronically or otherwise: see regs 5, 31A(5)(b) (reg 5 amended, and reg 31A added, by SI 2001/2448). At the date at which this volume states the law the contents of *Licensing Airlines in the UK* (CAA's Official Record Series 1) (which is amended from time to time) includes guidance on operating licences, route licences and air transport licences, contact information and a list of legislation relating to licensing of air operators. The Official Record Series 1 also contains annexes relating to the various licences and schedules of legal instruments. The Official Record Series 2 is published once a week and the notices contained in it are to be read in conjunction with the Official Record Series 1. As to the CAA see PARA 50 et seq.

2 As to the meaning of 'operator' see PARA 437.

3 As to operating licences see PARA 101 et seq.

4 As to air transport licences see PARA 106.

5 As to route licences see PARA 107.

6 See the European Parliament and EC Council Regulation 2111/2005 (OJ L344, 27.12.2005, p 15) on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier (implemented by the Civil Aviation (Provision of Information to Passengers) Regulations 2006, SI 2006/3303); and Commission Regulation (EC) No 474/2006 of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community (as amended by Commission Regulation (EC) No 1043/2007 (OJ L239, 12.9.2007, p. 50);

Commission Regulation (EC) No 1400/2007 (OJ L311, 29.11.2007, p. 12); Commission Regulation (EC) No 331/2008 (OJ L102, 12.4.2008, p. 3)).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

98 System of licensing of air carriers

NOTE 1--Regulations 2407/92, 2408/92 replaced: European Parliament and EC Council Regulation 1008/2008 (OJ L293, 31.10.2008, p 3).

NOTE 6--Regulation 474/2006 further amended: EC Commission Regulation 715/2008 (OJ L197, 25.7.2008, p 36), EC Commission Regulation 1131/2008 (OJ L306, 15.11.2008, p 47), EC Commission Regulation 298/2009 (OJ L95, 9.4.2009, p 16), EC Commission Regulation 619/2009 (OJ L182, 15.7.2009, p 4), and EC Commission Regulation 1144/2009 (OJ L312, 27.11.2009, p 16).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(ii) Air Operators' Certificates/99. Air operators' certificates.

(ii) Air Operators' Certificates

99. Air operators' certificates.

An aircraft registered in the United Kingdom¹ is not permitted to fly on any flight for the purpose of public transport² otherwise than under and in accordance with the terms of an air operator's certificate granted to the operator³ of the aircraft by the Civil Aviation Authority ('CAA')⁴ certifying that the holder of the certificate is competent to secure that aircraft operated by him on such flights as that in question are operated safely⁵.

A flight by an aircraft registered in the United Kingdom in the service of a police authority⁶ is deemed to be a flight for the purpose of public transport; and if any passenger is carried the flight is deemed to be for the purpose of public transport of passengers⁷.

An aircraft registered in the United Kingdom may not fly on any flight in the service of a police authority otherwise than under and in accordance with either the terms of an air operator's certificate granted to the operator of the aircraft or the terms of a police air operator's certificate granted to the operator of the aircraft certifying that the holder of the certificate is competent to secure that aircraft operated by him on flights for the purpose of police operations are operated as safely as is appropriate having regard to the particular purposes of the flight⁸.

An air carrier which fails to obtain approval for the use or provision of an aircraft from or to an undertaking⁹ or fails to comply with the conditions of any such approval is guilty of an offence¹⁰. Where the CAA has reason to believe that an aircraft is intended to be used by an air carrier in breach of the requirement for prior approval or in breach of any condition of any such approval, it has power to direct that the aircraft is not permitted to take off, and power to detain the aircraft, and a person failing to comply with the direction is guilty of an offence¹¹.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 As to the meaning of 'public transport aircraft' see PARA 363.

3 As to the meaning of 'operator' see PARA 437.

4 As to the CAA see PARA 50 et seq.

5 Air Navigation Order 2005, SI 2005/1970, art 6(1). A person who contravenes art 6 or art 7 (see the text to notes 6-8) is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.

6 As to police authorities see **POLICE** vol 36(1) (2007 Reissue) para 139 et seq.

7 Air Navigation Order 2005, SI 2005/1970, art 7(1), (2).

8 Air Navigation Order 2005, SI 2005/1970, art 7(3), (4).

9 Ie as required by EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 10. For the procedures to be followed by the CAA in making decisions relating to approvals under EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 10 see the Licensing of Air Carriers Regulations 1999, SI 1999/2245. The national law is preserved by EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) arts 2(d), 9.

10 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 9(1). As to the determination of whether an offence relating to the use or provision of an aircraft has been committed see regs 7, 9(3).

11 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, regs 5, 9(2).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(ii) Air Operators' Certificates/100. Criteria for issue of certificate.

100. Criteria for issue of certificate.

Before granting an air operator's¹ certificate or a police air operator's certificate, the Civil Aviation Authority ('CAA')² must be satisfied that the applicant is competent, having regard in particular to his previous conduct and experience, his equipment, organisation, staffing, maintenance and other arrangements, to secure the safe operation of aircraft of the types specified in the certificate on flights of the description and for the purposes so specified³.

The certificate may be granted subject to such conditions as the CAA thinks fit and it remains in force for the period specified in it⁴.

1 As to the meaning of 'operator' see PARA 437.

2 As to the CAA see PARA 50 et seq.

3 Air Navigation Order 2005, SI 2005/1970, arts 6(2)(a), 7(4)(a). As to the licensing procedure see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6; and PARAS 92-97. As to aerial application certificates see PARA 540.

4 Air Navigation Order 2005, SI 2005/1970, arts 6(2)(b), 7(4)(b). This is subject to art 92 (revocation, suspension and variation of certificates, licences and other documents): see PARA 490.

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/ (iii) Operating Licences/101. Operating licences.

(iii) Operating Licences

101. Operating licences.

'Operating licence' means an authorisation granted to an undertaking¹, permitting it to carry out carriage by air of passengers, mail, cargo or all three, as stated in the licence, for remuneration, hire or both². No undertaking established in the European Community is permitted within the territory of the Community to carry by air passengers, mail or cargo for remuneration, hire or both unless the undertaking has been granted the appropriate operating licence³. An undertaking which knowingly or recklessly undertakes the carriage by air of passengers, mail or cargo for remuneration or hire without the appropriate operating licence is guilty of an offence⁴. Where it believes that an aircraft is intended to be used by an undertaking without an operating licence, the Civil Aviation Authority ('CAA')⁵ has power to direct that the aircraft is not permitted to take off, and power to detain the aircraft⁶. A person failing to comply with the direction is guilty of an offence⁷.

An undertaking meeting the requirements of the EC licensing regulation⁸ is entitled to receive an operating licence⁹. The CAA performs the functions relating to the grant and maintenance of operating licences that are required to be performed by the United Kingdom¹⁰. An undertaking which, for the purpose of obtaining an operating licence or demonstrating that requirements have been met, knowingly or recklessly furnishes the CAA or the Secretary of State with false information is guilty of an offence¹¹. An air carrier which fails to comply with the requirements of a notice¹² to furnish information to the Secretary of State, or which furnishes false information in purported compliance with the requirements of the notice is also guilty of an offence¹³.

1 'Undertaking' means any natural person, any legal person, whether profit-making or not, or any official body whether having its own legal personality or not: EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 2(a); Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 2(2). As to the effect of the Council regulation see PARA 98 note 1.

2 See EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 2(c); and the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 2(2).

3 See EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 3(3). This article has effect without prejudice to the carriage by air of passengers, mail or cargo, performed by non-power driven aircraft or ultra-light power driven aircraft, as well as local flights not involving carriage between different airports, to which national law concerning operating licence applies: see art 1(2).

4 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 6. As to the determination of whether an offence relating to carriage has been committed by an undertaking see reg 7.

5 As to the CAA see PARA 50 et seq.

6 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 5.

7 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 5. A person guilty of an offence under the Licensing of Air Carriers Regulations 1992, SI 1992/2992, is liable (1) on summary conviction, to a fine not exceeding the statutory maximum; and (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both: reg 12. As to offences committed by bodies corporate see reg 13. As to the statutory maximum see PARA 43 note 12.

8 I.e EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) on licensing of air carriers. As to the requirements for the grant of an operating licence see PARA 102.

9 EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 3(2). Such a licence does not confer in itself any rights of access to specific routes or markets: art 3(2).

10 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 3(1). As to the meaning of 'United Kingdom' see PARA 30 note 1.

The Secretary of State is the competent authority for certain purposes: see reg 3(2). As to the Secretary of State see PARA 33.

11 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 8.

12 Is a notice served in a manner set out in the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 4: see PARA 94.

13 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 10.

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/ (iii) Operating Licences/102. Requirements for grant of operating licences.

102. Requirements for grant of operating licences.

The grant and validity of an operating licence is dependent upon the possession of a valid air operator's certificate¹. No undertaking² may be granted an operating licence by a member state unless:

- 74 (1) its principal place of business and, if any, its registered office are located in that member state³; and
- 75 (2) its main occupation is air transport in isolation or combined with any other commercial operation of aircraft or repair and maintenance of aircraft⁴.

The undertaking, including any undertaking which directly or indirectly participates in a controlling shareholding in an air carrier, must be owned and continue to be owned directly or through majority ownership by member states or nationals of member states, and must at all times be effectively controlled⁵ by such states or such nationals⁶.

An applicant air transport undertaking to which an operating licence is granted for the first time must be able to demonstrate to the reasonable satisfaction of the competent authorities of the licensing member state that:

- 76 (a) it can meet at any time its actual and potential obligations, established under realistic assumptions, for a period of 24 months from the start of operations⁷; and
- 77 (b) it can meet its fixed and operational costs incurred from operations according to its business plan and established under realistic assumptions, for a period of three months from the start of operations, without taking into account any income from its operations⁸.

An air carrier must be insured to cover liability in case of accidents, in particular in respect of passengers, luggage, cargo, mail and third parties⁹.

Ownership of aircraft is not a condition for granting or maintaining an operating licence but a member state must require, in relation to air carriers licensed by it that they have one or more aircraft at their disposal, through ownership or any form of lease agreement¹⁰, and those aircraft must be registered, at the option of the member state issuing the operating licence, in its national register or within the European Community¹¹.

The Civil Aviation Authority ('CAA')¹² may require, for the purpose of granting an operating licence¹³, proof that the persons who will continuously and effectively manage the operation of the undertaking are of good repute and that none of them is an undischarged bankrupt¹⁴. It may also suspend or revoke an operating licence in the event that it is satisfied that the holder is not a fit person to operate aircraft under the authority of that licence by reason of serious professional misconduct or a criminal offence¹⁵.

Where it has reason to believe that an applicant for, or the holder of, an operating licence¹⁶, or certain carriers¹⁷, has or have not met the requirements as to majority ownership or effective control¹⁸, the CAA is required to inform the Secretary of State¹⁹ and, upon determination by him that the requirements have not been met, either must refuse to grant or revoke the relevant operating licence or, in a case where the undertaking operates by virtue of an exemption, must except that undertaking from that exemption²⁰.

1 EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 9(1). The air operator's certificate must specify the activities covered by the operating licence and comply with the relevant criteria: art 9(1), (2). 'Air operator's certificate' means a document issued to an undertaking or a group of undertakings by the competent authorities of the member states which affirms that the operator in question has the professional ability and organisation to secure the safe operation of aircraft for the aviation activities specified in the certificate: art 2(d). As to the effect of the Council regulation see PARA 98 note 1. As to air operators' certificates see PARA 99 et seq.

2 As to the meaning of 'undertaking' see PARA 101 note 1.

3 EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 4(1)(a).

4 EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 4(1)(b).

5 'Effective control' means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising an influence on an undertaking, in particular by (1) the right to use all or part of the assets of an undertaking; (2) rights or contracts which confer a decisive influence on the running of the business of the undertaking: art 2(g).

6 EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 4(2), (4). For transitional provisions see art 4(3). An air carrier must at all times be able on request to demonstrate to the member state responsible for the operating licence that it meets the relevant requirements, and the Commission acting at the request of a member state must examine compliance with the requirements of this Article and take a decision if necessary: art 4(5).

7 EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 5(1)(a). As to the requirement that applicants provide business plans and other relevant commercial information in advance, and annual audited accounts see art 5(2), (6), Annex Pt A; as to an air carrier's obligation to notify the licensing authority of its plans see art 5(3), (4), Annex Pt B; as to the licensing authority's power to suspend or revoke a licence see art 5(5). As to the application of art 5 to air carriers exclusively engaged in operations with aircraft of less than 10 tonnes maximum take off weight or less than 20 seats see art 5(7).

8 EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 5(1)(b).

9 EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 7.

10 EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 8(1).

11 EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 8(2)(a). As to registering lease agreements see further art 8(2)(b); as to the right to grant temporary waivers as regards short term lease agreements see art 8(3); and as to transfers from the register of one member state to another see EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 8(4).

As to the requirement to register in the UK register see the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 18 (amended by SI 1993/3039, 1994/1732, 2004/1256); and the *Licensing Airlines in the UK* (CAA's Official Record Series 1) Sch 7.

12 As to the CAA see PARA 50 et seq.

13 As to the meaning of 'operating licence' see PARA 101.

14 Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 15(1). See also EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 6.

15 Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 15(2). As to the right to appeal against such a decision see PARA 104.

16 I.e. an operating licence granted in accordance with EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1).

17 I.e. carriers to which EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 16 for the time being applies.

18 See the text and notes 5, 6.

19 As to the Secretary of State see PARA 33.

20 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 4.

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

102 Requirements for grant of operating licences

TEXT AND NOTES--Regulation 2407/92 replaced: see PARA 98 NOTE 1.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/ (iii) Operating Licences/103. Conditions in operating licences.

103. Conditions in operating licences.

Conditions imposed on air carriers who are granted valid operating licences¹ by the Civil Aviation Authority ('CAA')² are that:

- 78 (1) they must not carry by air any passenger for remuneration or hire to whom accommodation for carriage on the flight has been made available by any person who is required to possess an air travel organiser's licence³ unless that person does hold such a licence⁴; and
- 79 (2) when undertaking the carriage of passengers having the common purpose of attending an association football match, they must not cause or permit a passenger to go or be taken on board the aircraft unless that passenger is in possession of a valid ticket of admission to the match⁵.

Where the CAA has reason to believe that an aircraft is intended to be used by an air carrier in breach of these requirements, it has power to direct that the aircraft is not permitted to take off, and power to detain the aircraft, and a person failing to comply with the direction is guilty of an offence⁶. An air carrier that knowingly or recklessly undertakes the carriage by air of passengers for remuneration or hire in breach of the requirement in head (1) or head (2) is guilty of an offence⁷.

1 As to the meaning of 'operating licence' see PARA 101.

2 As to the CAA see PARA 50 et seq.

3 As required by regulations made under the Civil Aviation Act 1982 s 71: see the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054; and PARA 127 et seq.

4 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 11(1)(a).

5 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 11(1)(c). For these purposes, a person is deemed to be in possession of a valid ticket of admission to the match where such a ticket is held on his behalf by another passenger: reg 11(1)(c).

6 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, regs 5, 11(2).

7 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, regs 6, 11(3). As to the determination of whether an offence relating to carriage has been committed see regs 7, 11(3).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on

carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/ (iii) Operating Licences/104. Right of appeal following refusal, revocation and suspension of operating licences.

104. Right of appeal following refusal, revocation and suspension of operating licences.

Where the Civil Aviation Authority ('CAA')¹ refuses an application for, or revokes or suspends, an operating licence², the applicant for, or the holder of, the licence has the right to appeal to the Secretary of State³.

Such an appeal must be made by a notice signed by or on behalf of the appellant, clearly identifying the case to which it relates and stating the grounds on which the appeal is based and the arguments on which the appellant relies⁴. Notice must be served on both the Secretary of State and the CAA⁵, and within 14 days after the date specified in the notification of the original decision⁶. There follows an exchange of submissions by the interested parties as they deem fit, which must take place within the prescribed time periods⁷. The Secretary of State may also ask the appellant or the CAA to answer such questions as he deems necessary⁸.

The Secretary of State may, if he thinks fit, uphold the decision of the CAA or direct it to reverse or vary its decision⁹. He must then notify the CAA and the appellant of his decision and of the reasons for it¹⁰.

1 As to the CAA see PARA 50 et seq.

2 Ie under the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 15: see PARA 102. As to the meaning of 'operating licence' see PARA 102.

3 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 19. As to appeals to the Secretary of State see Sch 1. As to the Secretary of State see PARA 33.

4 Licensing of Air Carriers Regulations 1992, SI 1992/2992, Sch 1 para 2.

5 Licensing of Air Carriers Regulations 1992, SI 1992/2992, Sch 1 para 3.

6 Licensing of Air Carriers Regulations 1992, SI 1992/2992, Sch 1 para 1, 4. When the CAA provides to a person having a right of appeal notification in writing of its decision to refuse, revoke or suspend an operating licence, the notification must specify a date, being not less than three working days after the date on which a copy of the notification was available for collection by or despatch to that person: Sch 1 para 1.

7 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, Sch 1 paras 5, 6. In the appeal proceedings no person may submit to the Secretary of State evidence which was not before the CAA when it decided the case: Sch 1 para 8.

8 See the Licensing of Air Carriers Regulations 1992, SI 1992/2992, Sch 1 para 7.

9 Licensing of Air Carriers Regulations 1992, SI 1992/2992, Sch 1 para 9.

10 Licensing of Air Carriers Regulations 1992, SI 1992/2992, Sch 1 para 10. Where the decision is to grant or revoke an operating licence the CAA must take the steps necessary to cause the Secretary of State's decision to be published in the Official Journal of the European Communities: Sch 1 para 10. For further provision with regard to the taking of the decision see Sch 1 paras 11, 12.

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/ (iii) Operating Licences/105. Rights conferred on holders of operating licences.

105. Rights conferred on holders of operating licences.

An operating licence¹ does not confer in itself any rights of access to specific routes or markets². However an air transport undertaking with a valid operating licence (ie an 'air carrier') is entitled to access to routes within the European Community without the need for a route licence³.

Community air carriers⁴ are permitted to exercise traffic rights⁵ in relation to routes within the EEA and between the EEA and Switzerland⁶, and therefore, United Kingdom air carriers do not require an air transport licence⁷ or route licence⁸ to exercise such rights⁹. A Community air carrier with a valid operating licence which has its principal place of business and, if any, its registered office in the European Community is permitted to exercise traffic rights between any point in Switzerland and any point in the Community¹⁰. Therefore, a United Kingdom air carrier does not require a route licence to exercise such traffic rights.

1 As to the meaning of 'operating licence' see PARA 101.

2 See EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 3(2). As to the effect of the Council regulation see PARA 98 note 1.

3 See EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) arts 2(a), 3; EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) art 2(b); the Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 2(2); and the Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, reg 2(2). As to route licences see PARA 107.

4 'Community air carrier' means an air carrier with a valid operating licence granted by a member state of the European Community or an EEA state or Switzerland in accordance with EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1): see EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) art 2(b); the Civil Aviation Act 1982 s 69A(8) (s 69A added by SI 1992/2992; definition amended by SI 2004/1256); and the Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, reg 2(2) (amended by SI 2004/1256). In the Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, regs 4, 4A, 6 and 6A, however, the expression 'Community air carrier' does not include a Swiss air carrier: reg 2(3) (added by SI 2004/1256). 'Swiss air carrier' means an air carrier which is licensed and has its principal place of business and, if any, its registered office in Switzerland: Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, reg 2(1A) (added by SI 1994/1731; definition added by SI 2004/1256). See also the Annex to the Agreement between the European Community and the Swiss Confederation of Air Transport (Brussels, 11 June 1999), which provides that without prejudice to art 15, the term 'Community air carrier' includes, for the purposes of the Agreement, an air carrier which is licensed and has its principal place of business and, if any, its registered office in Switzerland according to the provisions of EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1).

'EEA state' means a state which is a contracting party to the EEA Agreement (see PARA 98 note 1): Civil Aviation Act 1982 s 105(1) (definition added by SI 1994/1732); Licensing of Air Carriers Regulations 1992, SI 1992/2992, reg 2(1) (definition added by SI 1994/1732); Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, reg 2(1A) (added by SI 1994/1731).

5 'Traffic right' means the right of an air carrier to carry passengers, cargo and/or mail on an air service between two airports within the EEA states: see EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) art 2(f) (as it has effect in accordance with the EEA Agreement and the EC/Swiss Air Transport Agreement: see PARA 98 note 1); and the Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, reg 2(2). 'Airport' means any area within the EEA states which is open for commercial air transport operations: EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) art 2(k) (as it has effect in accordance with the EEA Agreement and the EC/Swiss Air Transport Agreement: see PARA 98 note 1); Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, reg 2(2). 'Air service' means a flight or a series of flights carrying passengers, cargo and/or mail for remuneration and/or hire: EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) art 2(c) (as it has effect in accordance with the EEA Agreement and the

EC/Swiss Air Transport Agreement: see PARA 98 note 1); Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, reg 2(2). 'Flight' means a departure from a specified airport towards a specified destination airport: EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) art 2(e); Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, reg 2(2).

6 See EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) art 3(1) (as it has effect in accordance with the EEA Agreement and the EC/Swiss Air Transport Agreement: see PARA 98 note 1); and the Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, regs 4, 4A (reg 4 amended by SI 1994/1731; Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, reg 4A added by SI 2004/1256). There are certain limitations on the exercise of traffic rights: see the Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, reg 5 (amended by SI 1993/3040; SI 1994/1731; and SI 2004/1256). Provision is also made as to offences and liabilities: see the Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, regs 6-11 (reg 6 amended by SI 1994/1731; Access for Community Air Carriers to Intra-Community Air Routes Regulations 1992, SI 1992/2993, reg 6A added by SI 2004/1256).

An airport tax which is greater for flights to other member states than for domestic flights and which does not compensate for the proportionally higher costs of processing passengers on flights to other member states is contrary to EEC Council Regulation 3821/85 Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) art 3(1): Case C-92/01 *Stylianakis v Greece* [2004] All ER (EC) 215, ECJ.

7 As to air transport licences see PARA 106.

8 As to route licences see PARA 107.

9 See the Civil Aviation Act 1982 s 64(2)(d) (added by SI 1992/2992; and amended by SI 1993/3039); and the Civil Aviation Act 1982 s 69A(2)(d) (as added: see note 4).

10 See the Agreement between the European Community and the Swiss Confederation of Air Transport (Brussels, 11 June 1999) art 15. Norway, Iceland and Liechtenstein are not parties to the Agreement and therefore, for these purposes, the expression 'Community air carrier', notwithstanding the EEA agreement (see PARA 98 note 1), does not include Norway, Iceland and Liechtenstein.

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

105 Rights conferred on holders of operating licences

TEXT AND NOTES--SI 1992/2993 revoked: see now Operation of Air Services in Community Regulations 2009, SI 2009/41.

NOTES 1-4--Regulations 2407/92, 2408/92 replaced: see PARA 98 NOTE 1.

NOTE 9--Civil Aviation Act 1982 ss 64(2)(d), 69A(2)(d) amended: SI 2009/41.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/A. REQUIREMENT FOR A LICENCE/106. Air transport licences.

(iv) Air Transport Licences and Route Licences

A. REQUIREMENT FOR A LICENCE

106. Air transport licences.

An air transport licence is not required in respect of flights for which a valid operating licence¹ is required². Subject to that, no aircraft registered in the United Kingdom may be used for the carriage for reward³ of passengers or cargo⁴ on flights⁵ in any part of the world, and no aircraft registered in any of the Channel Islands, the Isle of Man or any colony⁶ may be used on flights beginning or ending in the United Kingdom, unless⁷:

- 80 (1) the operator⁸ of the aircraft holds a licence (an 'air transport licence')⁹ granted to him¹⁰ by the Civil Aviation Authority ('CAA')¹¹ authorising him to operate aircraft on such flights as the flight in question¹²; and
- 81 (2) the terms of the licence are complied with so far as they relate to that flight and fall to be complied with before or during the flight¹³.

However, this does not apply to (a) a flight of a description specified by the CAA for these purposes¹⁴; (b) a particular flight or series of flights specified by the CAA for these purposes¹⁵; (c) a flight by an aircraft of which the CAA is the operator¹⁶.

1 Issued in accordance with EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) on licensing of air carriers (as it has effect in accordance with the EEA Agreement (see PARA 98 note 1)).

2 See the Civil Aviation Act 1982 s 64(2)(d) (added by SI 1992/2992; and amended by SI 1993/3039).

3 'Reward', in relation to a flight, includes any form of consideration received or to be received wholly or partly in connection with the flight irrespective of the person by whom or to whom the consideration has been or is to be given: Civil Aviation Act 1982 s 105(1).

4 As to the meaning of 'cargo' see PARA 52 note 2.

5 'Flight' means a journey by air beginning when the aircraft in question takes off and ending when it next lands: Civil Aviation Act 1982 s 105(1).

6 See **COMMONWEALTH** vol 13 (2009) PARA 705.

7 Civil Aviation Act 1982 ss 64(1), (2), 105(1) (s 64(2) amended by the Statute Law (Repeals) Act 1995).

8 As to the meaning of 'operator' see PARA 437.

9 As to air transport licences generally see the Civil Aviation Act 1982 ss 64-69; and PARA 116 et seq. Note that the function of making a decision on air transport licensing is one which may not be performed on the CAA's behalf by any other person: see the Civil Aviation Act 1982 s 7(1); and the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 15 (amended by SI 1992/2992).

10 Issued pursuant to the Civil Aviation Act 1982 s 65(1): see PARA 117.

11 As to the CAA see PARA 50 et seq.

12 Civil Aviation Act 1982 s 64(1)(a).

13 Civil Aviation Act 1982 s 64(1)(b).

14 See the Civil Aviation Act 1982 s 64(2)(a). For the instrument specifying the classes of flight which do not require an air transport licence see *Licensing Airlines in the UK* (CAA's Official Record Series 1) Sch 6.

15 See the Civil Aviation Act 1982 s 64(2)(b).

16 See the Civil Aviation Act 1982 s 64(2)(c).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

106 Air transport licences

NOTE 2--Civil Aviation Act 1982 s 64(2)(d) further amended: SI 2009/41.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/A. REQUIREMENT FOR A LICENCE/107. Route licences.

107. Route licences.

Route licences are not required for flights operated by carriers with valid operating licences on intra-Community routes (extended to the EEA and Switzerland)¹. Subject to that, no aircraft registered in the United Kingdom may be used for the carriage for reward of passengers or cargo on flights in any part of the world, and no aircraft registered in any of the Channel Islands, the Isle of Man or any colony may be so used on flights beginning or ending in the United Kingdom, where the aircraft is used by a Community air carrier, unless²:

- 82 (1) the operator of the aircraft holds a licence (a 'route licence')³ granted to him⁴ by the Civil Aviation Authority ('CAA')⁵ authorising him to operate aircraft on such flights as the flight in question⁶; and
- 83 (2) the terms of the licence are complied with so far as they relate to that flight and fall to be complied with before or during the flight⁷.

However, this does not apply to (a) a flight of a description specified by the CAA for these purposes⁸; (b) a particular flight or series of flights specified by the CAA for these purposes⁹; (c) a flight by an aircraft of which the CAA is the operator¹⁰.

1 See the EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8). As to the effect of the Council regulation see PARA 98 note 1.

2 Civil Aviation Act 1982 s 64(2) (amended by the Statute Law (Repeals) Act 1995; SI 1992/2992; SI 1993/3039); Civil Aviation Act 1982 s 69A(1), (2) (s 69A added by SI 1992/2992).

3 As to route licences generally see the Civil Aviation Act 1982 ss 64-69, as applied with modifications by s 69A(6), (7), (7A)-(7C) (s 69A as added (see note 3); s 69A(7) amended by the Statute Law (Repeals) Act 1995 and the Civil Aviation Act 2006 s 7(1), (2); the Civil Aviation Act 1982 s 69A(7A)-(7C) added by the Civil Aviation Act 2006 s 7(3)). Note that the function of making a decision on route licensing is one which may not be performed on the CAA's behalf by any other person: see the Civil Aviation Act 1982 s 7(1); and the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 15 (amended by SI 1992/2992).

4 ie pursuant to the Civil Aviation Act 1982 s 65(1), as applied by s 69A(6) (see note 3).

5 As to the CAA see PARA 50 et seq.

6 See the Civil Aviation Act 1982 s 69A(1)(a) (as added: see note 3).

7 See the Civil Aviation Act 1982 s 69A(1)(b) (as added: see note 3).

8 See the Civil Aviation Act 1982 ss 64(2)(a), 69A(2)(a), (6) (s 69A as added: see note 3). For the instrument specifying the classes of flight which do not require a route licence see *Licensing Airlines in the UK* (CAA's Official Record Series 1) Sch 3.

9 See the Civil Aviation Act 1982 ss 64(2)(b), 69A(2)(b), (6) (s 69A as added: see note 3).

10 See the Civil Aviation Act 1982 ss 64(2)(c), 69A(2)(c), (6) (s 69A as added: see note 3).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

107 Route licences

NOTE 2--Civil Aviation Act 1982 ss 64(2), 69A(2) amended: SI 2009/41.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/B. STATEMENT OF POLICIES/108. Statement of policies.

B. STATEMENT OF POLICIES

108. Statement of policies.

The Civil Aviation Authority ('CAA')¹ must from time to time publish a statement of the policies which it intends to apply in the performance of its air transport licensing functions and route licensing functions². It may also be required by notice of the Secretary of State³ to publish a statement of policy in respect of a particular point, which must be published within six months of the notice⁴. In either case, the CAA must consult representatives of the civil air transport industry of the United Kingdom and of users of air transport services before publishing its statement⁵.

1 As to the CAA see PARA 50 et seq.

2 See the Civil Aviation Act 1982 ss 69(1), 69A(6), (7)(e) (s 69A added by SI 1992/2992). The manner of publication of any such statement is to be as the CAA may determine: Civil Aviation Act 1982 ss 69(4), 69A(6) (as so added). See, eg, the *CAA Statement of Policies on Route and Air Transport Licensing* (7 August 2007).

3 As to the Secretary of State see PARA 33.

4 See the Civil Aviation Act 1982 ss 69(2), 69A(6) (s 69A as added: see note 2).

5 See the Civil Aviation Act 1982 ss 69(3), 69A(6) (s 69A as added: see note 2).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/C. APPLICATIONS FOR LICENCES AND PROPOSALS FOR REVOCATION, SUSPENSION OR VARIATION OF LICENCES/109. Applications for air transport and route licences.

C. APPLICATIONS FOR LICENCES AND PROPOSALS FOR REVOCATION, SUSPENSION OR VARIATION OF LICENCES

109. Applications for air transport and route licences.

The Civil Aviation Authority ('CAA')¹ may refuse to consider an application for the grant, revocation, suspension or variation of an air transport licence or route licence² unless it is made in the prescribed manner³. The CAA must publish particulars of the application⁴; it may, however, dispense with publication if this is unlikely to prejudice any interested persons having a right to be heard⁵.

1 As to the CAA see PARA 50 et seq.

2 As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107.

3 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 16(1) (amended by SI 1992/2992). An application for the grant of a licence must be made in writing, served on the CAA not less than six months before the beginning of the period for which it is proposed to be in effect, and contain particulars with respect to such matters as may be specified in the Official Record: see the Civil Aviation Act 1982 ss 65(1), 69A(6) (s 69A added by SI 1992/2992); and the Civil Aviation Authority Regulations 1991, SI 1991/1672, regs 5, 16(1)(a), (b) (reg 5 amended by SI 2001/2448). As to the Official Record see PARA 98 note 1. Any other application must be so served not less than six months before the revocation, suspension or variation is to take effect, and a signed copy of any such application made other than by the holder must be served on the holder: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 16(1)(a), (2) (reg 16(2) amended by SI 1992/2992). An application must be accompanied by any applicable charge under the Civil Aviation Act 1982 s 11 (see PARA 69) which must be published in the Official Record (see PARA 98 note 1): see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 16(1)(c). An application for the revocation, suspension or variation of a licence may be made by (1) the holder of an operating licence, any air transport licence or a route licence; (2) the holder of any air operator's certificate; or (3) the holder of any aerodrome licence: see regs 16(6), 25(1)(b)-(d) (regs 16(6), 25(1)(b) amended by SI 1992/2992). As to operating licences see PARA 101 et seq. As to an air operator's certificate see PARAS 99-100. As to aerodrome licences see PARAS 226-227.

4 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 16(3) (amended by SI 1992/2992).

5 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 16(3) proviso. As to who has a right to be heard see reg 25(1); and PARA 115 note 3. The CAA may not dispense with publication in the case of an environmental application: see reg 16(3) proviso. As to environmental cases see PARA 113.

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences

(regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/C. APPLICATIONS FOR LICENCES AND PROPOSALS FOR REVOCATION, SUSPENSION OR VARIATION OF LICENCES/110. Revocation, suspension or variation of licences without application.

110. Revocation, suspension or variation of licences without application.

If the Civil Aviation Authority ('CAA')¹ proposes to revoke, suspend or vary an air transport licence², otherwise than in pursuance of an application made to it, on the ground that it is not satisfied as to the holder's experience or resources and financial arrangements³, it must publish particulars of the proposal in its Official Record⁴ after serving⁵ on the holder of the licence not less than 21 days' notice of its intention to publish such particulars together with its reasons for its proposal⁶, and after considering any representations made by him before the expiration of the notice⁷. The CAA may dispense with publication of the particulars where such dispensation has the consent of the licence holder, in the case of a proposal to revoke or suspend⁸, or is unlikely to prejudice any interests, in the case of varying a licence⁹.

If the CAA proposes to revoke, suspend or vary an air transport licence on other grounds and otherwise than in pursuance of an application made to it in that regard, or proposes to revoke, suspend or vary a route licence¹⁰ otherwise than in pursuance of an application made to it in that regard, it is not required to publish the particulars of its proposal¹¹ (1) where the Secretary of State¹² has directed it to revoke, suspend or vary a licence, or to rehear¹³ a case¹⁴; (2) where the CAA is under a duty under the Airports Act 1986¹⁵ which requires it to revoke, suspend or vary a licence¹⁶; or (3) where (except in the case of an environmental proposal¹⁷) it is satisfied that no interest will be prejudiced and the licence holder consents to the non-publication¹⁸.

If the CAA has reason to believe that the holder of an air transport licence or route licence is not a United Kingdom national¹⁹, it is its duty to inform the Secretary of State, and if he so directs, to revoke the licence²⁰. Before reaching a decision that it has reason to believe that the holder is not a United Kingdom national, the CAA must serve on the holder of the licence not less than 21 days' notice of its intention to consider the matter, and must consider any representation which the holder may have made²¹.

Where a person holds an operating licence²² granted by an authority in any EEA state²³ or Switzerland and a route licence, and his operating licence is revoked or suspended by the relevant licensing authority, as from the date when the revocation or suspension takes effect, the route licence ceases to be in force or, in the case of suspension, is not effective during the period of suspension of the operating licence²⁴.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'air transport licence' see PARA 106.

3 The CAA may suspend an air transport licence after serving on the licence holder six working days' notice of its proposal to suspend the licence (together with its reasons for the proposal) where it is not satisfied as to the holder's experience or resources and financial arrangements: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 17(3) (amended by SI 1992/2992). As to the experience in the field of aviation or the resources and financial arrangements needed to satisfy the CAA see the Civil Aviation Act 1982 s 66(3)(a), (b); and PARA 116.

4 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, regs 5, 17(1)(c) (reg 5 amended by SI 2001/2448). As to the Official Record see PARA 98 note 1.

5 As to service of documents see PARA 94 note 5.

6 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 17(1)(a).

- 7 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 17(1)(b).
 - 8 See note 3.
 - 9 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 17(1) proviso.
 - 10 As to the meaning of 'route licence' see PARA 107.
 - 11 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 17(2) (amended by SI 1992/2992).
 - 12 As to the Secretary of State see PARA 33.
 - 13 Ie under the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 29(1): see PARA 122. As to appeals and rehearings see reg 27, reg 29; and PARAS 121-122.
 - 14 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 17(2)(a).
 - 15 Ie the duty under the Airports Act 1986 s 31(2), being a duty so to perform its air transport licensing functions as to secure that any traffic distribution rules in force under s 31 are complied with: see PARA 272.
 - 16 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 17(2)(b).
 - 17 As to environmental proposals see PARA 113.
 - 18 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 17(2)(c).
 - 19 As to the meaning of 'United Kingdom national' see PARA 52 note 2.
 - 20 See the Civil Aviation Act 1982 s 65(3)(b) (amended by the Statute Law Repeals Act 1995), the Civil Aviation Act 1982 ss 66(3), 69A(6) (s 69A added by SI 1992/2992).
- It is also the CAA's duty to inform the Secretary of State if it has reason to believe that the holder of an air transport licence or route licence is not a body which is (1) incorporated under the law of any part of the United Kingdom or (in respect of an air transport licence only) the law of a relevant overseas territory; and (2) controlled by United Kingdom nationals, and if the Secretary of State so directs, it must revoke the licence: see the Civil Aviation Act 1982 s 65(3)(b) (as so amended), ss 66(3), 69A(6), (7)(c) (s 69A as so added). Before reaching a decision that it has reason to believe that the holder of an air transport licence or route licence is not such a body, the CAA must serve on the holder of the licence not less than 21 days' notice of its intention to consider the matter, and must consider any representation which the holder may have made: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 17(4) (amended by SI 1992/2992). 'Relevant overseas territory' means any of the Channel Islands, the Isle of Man, or any colony: Civil Aviation Act 1982 s 105(1).
- 21 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 17(4) (as amended: see note 20).
 - 22 As to operating licences see PARA 101 et seq.
 - 23 As to the meaning of 'EEA state' see PARA 105 note 2.
 - 24 See the Civil Aviation Act 1982 s 69A(5) (s 69A as added (see note 20); and s 69A(5) amended by SI 1994/1732 and SI 2004/1256).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences

(regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/C. APPLICATIONS FOR LICENCES AND PROPOSALS FOR REVOCATION, SUSPENSION OR VARIATION OF LICENCES/111. Provisional variation of licence for damaging behaviour.

111. Provisional variation of licence for damaging behaviour.

Where the holder of an air transport licence or route licence¹ (the 'applicant') applies to the Civil Aviation Authority ('CAA')² for the variation of a licence held by another person (the 'respondent') in order to restrain him from engaging in behaviour damaging to the applicant's business, he may require in view of the urgency of the matter a preliminary hearing of the application so that his competitor's licence is provisionally varied pending the hearing³.

Within 20 working days of the date of service of the application⁴, the CAA must hold a preliminary hearing if it is satisfied that there is enough evidence as to the respondent's behaviour and that its statutory duties, its statement of policies⁵ and the urgency of the matter warrant the hearing⁶. The CAA will hear both applicant and respondent as well as any other person whom it wishes to hear⁷, including those persons whom it must consult before a hearing⁸. The CAA must give a decision within five days of the end of the preliminary meeting: the decision can only be a decision to vary provisionally or to refuse provisionally to vary the respondent's air transport licence or route licence⁹. A provisional variation has effect until the time the decision taken by the CAA in a full hearing takes effect¹⁰.

1 As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107.

2 As to the CAA see PARA 50 et seq.

3 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 24(1)(a), (c) (reg 24(1) amended by SI 1992/2992). As to the hearing see PARA 115 et seq. The applicant's statement must give particulars of the behaviour complained of and the extent to which his business is being or is likely to be damaged by that behaviour: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 24(1)(b) (as so amended). A copy of the application must be served by the applicant on the respondent on the same day as the application is being served on the CAA: reg 24(1)(d) (as so amended). The respondent has five days to make representations and serve them on the CAA and the applicant: see reg 24(2). As to the service of documents see PARA 94 note 5. See also the *CAA Statement of Policies on Route and Air Transport Licensing* (7 August 2007), which details the CAA's approach to regulating anti-competitive behaviour through the licensing system.

4 Notice of the time and place of the preliminary hearing must be given at least ten days before the date of the hearing: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 24(3), (4). Similarly, if the CAA decides not to hold a preliminary hearing, it must so notify the parties within ten days of the service of the application: see reg 24(3), (4).

5 As to the CAA's statement of policies see PARA 108.

6 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 24(3), (5). As to the statutory duties of the CAA see PARA 51.

7 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 24(6). Regulation 21 (consultation by the CAA), reg 22 (furnishing of information by the CAA) and reg 26(1), (4), (6), (7) (procedure) apply to the preliminary hearing as they apply to a full hearing: see reg 24(7); and PARAS 114-115. At a preliminary hearing the applicant and the respondent have the same rights as a party to a case in a hearing pursuant to reg 25 (see PARA 115) and the CAA may, to such extent as it thinks fit, permit any other person whom it decides to hear to exercise the same rights: reg 24(8).

8 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 24(9). As to consultations see PARA 114.

9 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 24(10), (11) (reg 24(11) amended by SI 1992/2992). The decision notice must state whether or not the CAA has decided provisionally to vary the

respondent's licence, and contain the terms of the variation (if so decided) and the date, time and place of the hearing: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 24(10)(a)-(c). The CAA must give the reasons for its decision within ten days of the end of the preliminary hearing: see reg 24(10).

10 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 24(11). As to the full hearing see PARA 115.

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/C. APPLICATIONS FOR LICENCES AND PROPOSALS FOR REVOCATION, SUSPENSION OR VARIATION OF LICENCES/112. Objections and representations.

112. Objections and representations.

Within 21 days (or such shorter period as the Civil Aviation Authority ('CAA')¹ may provide²) of the publication of an application or of the publication of a proposal by the CAA for the grant, revocation, suspension or variation of an air transport licence or route licence³, or within three working days of notification by the CAA that the application or proposal has been made and will not be published, any person may enter an objection to, or make a representation about, the application or proposal⁴. A copy of the objection or representation must be served within the specified time limits⁵ on the applicant (if any) on any other person who holds a licence to which the application or proposal relates, and on any person or body which the CAA is obliged⁶ to consult⁷.

1 As to the CAA see PARA 50 et seq.

2 The CAA is only permitted to specify a period of less than 21 days in certain circumstances: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 20(1) proviso (amended by SI 1992/2992; and SI 2007/3556).

3 As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107.

4 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 20(1) (amended by SI 1992/2992). As to environmental cases see PARA 113.

5 I.e. within 24 hours after service on the CAA by the person making the objection or representation where he is the holder of an air transport licence or route licence, or by the CAA within seven days of the day of service on the CAA in any other case: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 20(3) (amended by SI 1992/2992). As to the service of documents see PARA 94 note 5.

6 I.e. under the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 21: see PARA 114.

7 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 20(3) (as amended: see note 5). Upon being so served the applicant must, if so required, serve the person making the objection or representation with a copy of the application within three working days of being required to do so: see reg 20(4).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22);

Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/C. APPLICATIONS FOR LICENCES AND PROPOSALS FOR REVOCATION, SUSPENSION OR VARIATION OF LICENCES/113. Environmental cases.

113. Environmental cases.

The Civil Aviation Authority ('CAA')¹ may receive an environmental application or make an environmental proposal for the grant or variation of an air transport or route licence², being a licence which authorises, or which if granted would authorise, the holder to operate either a helicopter under 3,000 feet above the surface for the greater part of the distance which it flies over land or any aircraft the operation of which, in the opinion of the CAA, will or may cause an exceptional amount of noise, vibration, pollution or other disturbance³. The CAA must designate the application or proposal as an environmental case and publish a notice of this designation⁴. Objections or representations⁵ on grounds of noise, vibration, pollution or other disturbance must be served within 42 days of the date of publication of the designation notice⁶.

1 As to the CAA see PARA 50 et seq.

2 As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107. As to applications for an air transport or route licence see PARA 109.

3 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 19(1)(a), (b). Environmental applications and environmental proposals do not include applications or proposals which do not relate to a licence to operate a regular and frequent service or to a proposal by the CAA to vary a licence on the ground that it is no longer satisfied as to the matters specified in the Civil Aviation Act 1982 s 66(3)(a), (b) (experience or resources and financial arrangements of the licence holder: see PARA 116): see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 19(1)(i), (ii). As to environmental disturbances see PARAS 259-264.

4 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 19(2). The notice must be published in the CAA's Official Record: see reg 5; and PARA 98 note 1.

5 As to objections and representations see PARA 112.

6 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 20(2). As to the service of documents see PARA 94 note 5.

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27);

penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/C. APPLICATIONS FOR LICENCES AND PROPOSALS FOR REVOCATION, SUSPENSION OR VARIATION OF LICENCES/114. Preliminaries to hearings.

114. Preliminaries to hearings.

Before the date fixed for the hearing of a case¹, the Civil Aviation Authority ('CAA')² must furnish to any person or body who is entitled to be heard³, or which it is required to consult⁴, all information which the CAA has obtained in connection with the case or which the CAA has reason to believe will be referred to at the hearing of the case⁵.

The CAA may hold a preliminary meeting to discuss the conduct of the case with all parties⁶, with persons whom the CAA wishes to hear in relation to the case, and with those persons consulted⁷ by the CAA who responded in writing⁸.

In relation to the grant, refusal to grant, revocation, suspension or variation of any air transport licence or route licence⁹, the CAA must also consult the Isle of Man Department of Highways, Ports and Properties in any case concerning the Isle of Man, and the Secretary of State in any case concerning Gibraltar¹⁰.

1 Ie pursuant to the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 25: see PARA 115.

2 As to the CAA see PARA 50 et seq.

3 As to who has a right to be heard see PARA 115 note 3.

4 Ie pursuant to the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 21: see the text to notes 9-10.

5 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 22. However, the CAA may not disclose any information provided by the Secretary of State where the latter has certified that a disclosure would not be in the public interest: see reg 22 proviso (i). Where the CAA may disclose information, it must first consult the person or body who furnished such information; but it may not disclose information relating to the commercial or financial affairs of the person or body who provided it if it cannot be disclosed without disadvantage to that person or body which, by comparison with the advantage to the public and the prospective recipient, is unwarranted: see reg 22 proviso (ii). As to the Secretary of State see PARA 33.

6 'Party' means a person who has a right to be heard pursuant to the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 25(1) (see PARA 115 note 3): reg 3(1).

7 Ie pursuant to the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 21: see the text and note 10.

8 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 23(1), (2). Any such person may attend in person or be represented by an authorised representative: reg 23(2). Preliminary meetings may be conducted on behalf of the CAA only by a member or employee of the CAA: reg 23(3).

9 As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107.

10 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 21. Such consultation is not necessary where (1) the application or licence is for not more than four flights in any one direction between the same two places; (2) the CAA is acting in pursuance of its duty under the Civil Aviation Act 1982 s 65(2) or (3) (see PARA 116) or s 66(3) (see PARA 110); (3) the CAA is compelled to refuse, revoke, suspend or vary a licence under the Airports Act 1986 s 31 (see PARA 272); or (4) the CAA is acting in pursuance of its duty under the Civil Aviation Act 1982 s 69A(4) (see PARA 116): see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 21 proviso (amended by SI 1992/2992).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/D. THE HEARING AND DECISION/115. Hearings.

D. THE HEARING AND DECISION

115. Hearings.

No decision to grant, refuse to grant, revoke, suspend or vary (other than provisionally) an air transport or route licence¹ may be made by the Civil Aviation Authority ('CAA')² until all persons having a right to be heard³ have had the opportunity of being heard⁴ by the CAA, sitting with such of its employees acting as advisers as it thinks fit⁵. Any person who has a right to be heard is a party to the case⁶.

The CAA must serve⁷ 14 days' written notice of the date, time and place of the hearing on persons intended to be heard⁸, but in cases considered by the CAA to be of compelling urgency a hearing may be held without such previous notice, provided sufficient notice is given⁹.

Hearings must be held in public, unless the CAA decides otherwise¹⁰. At a hearing every party to the case¹¹ and, if the CAA thinks fit, any person it thinks fit to hear¹², may appear in person or be represented, may produce oral and written evidence and may examine witnesses¹³. The proceedings are recorded and a transcript may be made available on terms¹⁴.

Failure to give any notice or any other procedural irregularity does not invalidate the action taken by the CAA¹⁵.

1 As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107.

2 As to the CAA see PARA 50 et seq.

3 The following persons have a right to be heard: the applicant; the holder of an operating licence, air transport licence, route licence or air operator's certificate or aerodrome licence; and persons representative of those who have served objections or representations whether they expressed the views of passengers or shippers of cargo or whether they were made on the ground of environmental disturbance: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 25(1) (amended by SI 1992/2992). However, no person other than the applicant and the holder of the licence to which the application relates has a right to be heard unless he has made an objection or representation and has then stated that he wishes to be heard: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 25(1) proviso (i). No person may be heard before the CAA makes a decision in a case where the Secretary of State has directed that the licence be granted, refused, revoked, suspended or varied or where it is the duty of the CAA to refuse, revoke, suspend or vary the licence under the Airports Act 1986 s 31(2) (see PARA 272) or the Civil Aviation Act 1982 s 69A(4) (see PARA 116): Civil Aviation Authority Regulations 1991 reg 25(1) proviso (ii) (amended by SI 1992/2992). Save in a case where the Secretary of State has given a direction that the licence be granted, refused, revoked, suspended or varied, the CAA may, if it thinks fit, hear a person who has no right to be heard, provided he has served an objection or representation: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 25(2). As to operating licences see PARA 101 et seq. As to an aircraft operator's certificate see PARAS 99-100. As to aerodrome licences see PARAS 226-227. As to objections and representations see PARA 112. As to environmental cases see PARA 113. As to the Secretary of State see PARA 33.

4 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 25(1) (as amended: see note 3).

5 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 26(1). For the purpose of conducting a hearing and making a decision, the quorum of the CAA is two members, although in certain circumstances the quorum is one member: see reg 15(2) (amended by SI 1992/2992). 'Hearing' or 'preliminary hearing' means a hearing or preliminary hearing at which oral evidence or argument may be heard: Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 3(1).

6 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 3(1). See also note 3.

7 As to the service of documents see PARA 94 note 5.

8 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 25(3). The same notice must be served on any person consulted by the CAA who has responded in writing: see reg 25(3). As to consultations see PARA 114. A similar notice must be published in the Official Record not less than seven days before the date of the hearing, and must be exhibited in a public place in the CAA's principal office: see regs 5, 25(3) (reg 5 amended by SI 2001/2448). As to the Official Record see PARA 98 note 1.

9 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 25(3) proviso.

10 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 26(4). Two or more cases may be heard together, if the CAA thinks fit, but a party to one case must not on that account be deemed to be a party to any other case: reg 25(4).

11 See the text and notes 3, 6.

12 In pursuant to the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 25(2): see the text and note 3.

13 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 26(2). The CAA may allow a person who has no right to be heard to exercise the same rights as a party to the case: see reg 26(2); and see the text and notes 3, 6. Any person who has served an objection or representation (see PARA 112), but who does not wish to be heard, may make a written submission which he must serve on the CAA not less than three working days before the date fixed for the hearing of the case: reg 26(3). A person consulted by the CAA who has responded in writing may attend the hearing and may be given the opportunity by the CAA to make observations to which all parties and other persons heard may respond: see reg 26(5). As to consultations see PARA 114.

14 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 26(7), (8).

15 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 26(6).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

115 Hearings

NOTE 10--SI 1991/1672 reg 26(4) amended: SI 2008/2683.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/D. THE HEARING AND DECISION/116. Considerations for decision.

116. Considerations for decision.

It is the duty of the Civil Aviation Authority ('CAA')¹ to perform its functions in the manner which it considers is best calculated to secure that the services provided by British airlines² satisfy public demand at the lowest charges consistent with a high standard of safety, with an economic return to efficient operators and with securing the sound development of the civil air transport industry in the United Kingdom³. The CAA must likewise endeavour to further the reasonable interests of users of air transport services⁴.

While the CAA has a number of duties to fulfil in the performance of its air transport licensing functions and route licensing functions, it must see that in performing those functions it imposes the minimum restrictions on the civil air transport industry of the United Kingdom and the services which it provides consistent with its performance of those duties⁵.

The CAA must ensure that British airlines compete effectively with other airlines on international routes having regard to (1) any advice received from the Secretary of State⁶ with respect to the likely outcome of negotiations with the government of any other country or territory for the purpose of securing any right required for the operation by a British airline of any air transport services outside the United Kingdom⁷; and (2) the need to secure the most effective use of airports in the United Kingdom⁸. Regard must also be given to the effect that any new service, which the applicant proposes to offer under the new licence, may have on services already provided by British airlines, particularly where the existing services and the new service are similar in terms of route; and, where several applicants propose to provide similar services, the CAA must have regard to any benefits which may arise from enabling two or more airlines to offer such services⁹.

The CAA must also have regard to the need to minimise so far as reasonably practicable any adverse effects on the environment and any disturbance to the public from noise, vibration, atmospheric pollution or any other cause attributable to the use of aircraft for the purposes of civil aviation¹⁰.

The CAA must:

- 84 (a) refuse to grant an air transport licence or a route licence (unless the Secretary of State consents to its grant)¹¹; or
- 85 (b) revoke¹² such a licence,

if it is not satisfied that the applicant is either a United Kingdom national¹³ or a body incorporated under the law of any part of the United Kingdom or (in the case of an air transport licence only) of a relevant overseas territory¹⁴, and is controlled by United Kingdom nationals¹⁵.

The CAA must refuse to grant an air transport licence if it is not satisfied that the applicant is a fit person to operate aircraft under the authority of a licence having regard to his and his employees' experience and past activities¹⁶, and that his resources and financial arrangements are adequate¹⁷. Similar criteria apply to the making of a decision to revoke, suspend or vary an air transport licence¹⁸.

No route licence may be granted by the CAA so as to permit the exercise of those traffic rights to which access is otherwise denied¹⁹ to the aircraft operator concerned²⁰. The CAA must refuse

to grant a route licence²¹ if it is not satisfied that the applicant possesses a valid operating licence²².

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'British airline' see PARA 52 note 2.

3 See the Civil Aviation Act 1982 s 4(1)(a); and PARA 52. As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 See the Civil Aviation Act 1982 s 4(1)(b); and PARA 52.

5 See the Civil Aviation Act 1982 ss 68(4), 69A(6) (s 69A added by SI 1992/2992).

6 As to the Secretary of State see PARA 33.

7 Civil Aviation Act 1982 ss 68(1)(a), 69A(6) (s 69A as added: see note 5). Negotiations for traffic rights between states are conducted at governmental level: see further PARA 4.

8 Civil Aviation Act 1982 ss 68(1)(b), 69A(6) (s 69A as added: see note 5). As to the use of airports, and traffic distribution rules and orders limiting aircraft movements at airports, see PARAS 272-273.

9 See the Civil Aviation Act 1982 ss 68(2), 69A(6) (s 69A as added: see note 5).

10 See the Civil Aviation Act 1982 ss 68(3), 69A(6) (s 69A as added: see note 5). As to environmental disturbances see PARAS 259-264.

11 See the Civil Aviation Act 1982 ss 65(3), 69A(6) (s 69A as added: see note 5).

12 An application for the revocation, suspension or variation of an air transport licence or a route licence may be made to the CAA at any time by a person of a prescribed description: Civil Aviation Act 1982 ss 66(1), 69A(6) (s 69A as added: see note 5). The CAA may at any time revoke, suspend or vary an air transport licence or a route licence if it considers it appropriate to do so, whether or not an application with respect to the licence has been made in pursuance of s 66(1): ss 66(2), 69A(6) (s 69A as so added). As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107. 'Prescribed' means prescribed by regulations made by the Secretary of State: s 105(1). As to the regulations made see the Civil Aviation Authority Regulations 1991, SI 1991/1672.

13 See the Civil Aviation Act 1982 ss 65(3)(a), 66(3), 69A(6) (s 69A as added: see note 5). As to the meaning of 'United Kingdom national' see PARA 52 note 2. See also note 22.

14 As to the meaning of 'relevant overseas territory' see PARA 110 note 20.

15 See the Civil Aviation Act 1982 s 65(3)(b) (amended by the Statute Law (Repeals) Act 1995), the Civil Aviation Act 1982 ss 66(3), 69A(6), (7)(c) (s 69A as added: see note 5).

Where the CAA proposes to refuse to grant a licence, it has a duty to give notice to the Secretary of State and postpone its decision until the Secretary of State's consent is given or refused: see ss 65(3), 69A(6) (s 69A as so added). Before deciding that the holder of an air transport licence or a route licence is neither a United Kingdom national nor such a body the CAA must serve on him 21 days' notice of its intention to consider the matter, and consider any representations he makes before the expiration of that period: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 17(4); and PARA 110.

16 See the Civil Aviation Act 1982 ss 65(2)(a), 69A(6), (7)(a) (s 69A as added: see note 5).

17 See the Civil Aviation Act 1982 ss 65(2)(b), 69A(6), (7)(a) (s 69A as added: see note 5).

18 See the Civil Aviation Act 1982 ss 66(3)(a), (b), 69A(6), (7)(b) (s 69A as added: see note 5).

19 Ie by virtue of exceptions contained in EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) on access for Community air carriers to intra-Community air routes (as it has effect in accordance with the Agreement on the European Economic Area (Oporto, 2 May 1992; Cm 2073 (OJ L1, 3.1.94, p 3)) as adjusted by the Protocol (Brussels, 17 March 1993; Cm 2183 (OJ L1, 3.1.94, p 572)) (the 'EEA Agreement'), as amended by the Decision of the EEA Joint Committee No 7/94 of 21 March 1994 amending Protocol 47 and certain Annexes to the EEA Agreement) arts 3-6: see the Civil Aviation Act 1982 s 69A(3), (8) (s 69A as added (see note 5); and s 69A(8) amended by SI 1993/3039 and SI 1994/1732).

20 See the Civil Aviation Act 1982 s 69A(3) (s 69A as added: see note 5).

21 le in pursuance of an application under the Civil Aviation Act 1982 s 65 (see PARA 117) as applied by s 69A(6).

22 Civil Aviation Act 1982 s 69A(4) (s 69A as added: see note 5). An 'operating licence' is an operating licence granted in any EEA state or Switzerland in accordance with EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) on licensing of air carriers (as it has effect in accordance with the EEA agreement (see note 19) as amended by Decision of the EEA Joint Committee No 7/94 of 21 March 1994 amending Protocol 47 and certain Annexes to the EEA Agreement): Civil Aviation Act 1982 ss 69A(8), 105(1) (s 69A as so added; definitions amended by SI 1993/3039; SI 1994/1732; and SI 2004/1256). As to the meaning of 'EEA state' see PARA 105 note 2. As to operating licences see PARA 101 et seq.

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

116 Considerations for decision

NOTES 19-22--Civil Aviation Act 1982 ss 69A(3), 69A(8) amended: SI 2009/41.

NOTE 22--SI 1991/1672 reg 3(1) definition of 'operating licence' substituted: SI 2009/41.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/D. THE HEARING AND DECISION/117. Decisions.

117. Decisions.

The Civil Aviation Authority ('CAA')¹ may either grant an air transport licence or a route licence² to the applicant in the terms³ requested by him or in those terms with such modification as it thinks fit, or refuse to grant a licence⁴.

The CAA may publish particulars of and reasons for any decision with respect to a licence or an application for a licence⁵.

1 As to the CAA see PARA 50 et seq.

2 As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107.

3 As to the terms of a licence see PARA 118.

4 See the Civil Aviation Act 1982 ss 65(1), 69A(6) (s 69A added by SI 1992/2992). The CAA may refuse a licence for any reason; it is not confined to the reasons specified in respect of air transport licences in the Civil Aviation Act 1982 s 65(2), (3) (see PARA 116), or the reasons specified in respect of route licences in s 65(3), and s 69A(4) (see PARA 116): ss 65(4), 69A(6), (7)(a) (s 69A as so added). The CAA also has a statement of policies it applies in the performance of its air transport licensing functions and route licensing functions: see PARA 108.

5 Civil Aviation Act 1982 ss 67(4), 69A(6) (s 69A as added: see note 4).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/D. THE HEARING AND DECISION/118. Terms of licences.

118. Terms of licences.

An air transport licence or route licence¹ may contain such terms as the Civil Aviation Authority ('CAA')² thinks fit³. The terms may be, or include, terms settled by a person other than the CAA⁴, and may include terms as to the charges which are to be made and the goods, services and other benefits which are and are not to be furnished in connection with a charter contract to which the licence relates⁵.

If the CAA establishes a schedule of terms and includes in an air transport licence or a route licence a term that the holder must comply with terms set out in the schedule, then any proposal by the CAA to vary the schedule or any part of it must be treated as a proposal to vary every licence containing that term⁶. An application for the variation of the schedule of terms set out in a document published by the CAA and entitled the United Kingdom Cabotage Air Passenger Tariff may be made. Such an application may be made by the holder of any licence which includes a term requiring compliance with that schedule of terms, and is to be treated as an application for the variation of every licence containing the same term⁷.

1 As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107.

2 As to the CAA see PARA 50 et seq.

3 Civil Aviation Act 1982 ss 65(5), 69A(6) (s 69A added by SI 1992/2992).

4 See the Civil Aviation Act 1982 ss 65(5)(a), 69A(6) (s 69A as added: see note 3).

5 See the Civil Aviation Act 1982 ss 65(5)(b), 69A(6) (s 69A as added: see note 3).

6 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 18(1) (amended by SI 1992/2992). When a licence contains such a term relating to a schedule, the CAA must publish the schedule and any variations to it in its Official Record or otherwise: reg 18(2) (amended by SI 1992/2992). As to the Official Record see PARA 98 note 1.

7 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 18(3) (amended by SI 1992/2992).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24);

offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/D. THE HEARING AND DECISION/119. Statement of reasons.

119. Statement of reasons.

Where the Civil Aviation Authority ('CAA')¹ takes a decision in relation to an air transport licence or route licence², it must give a statement of its reasons to all parties³ to the case, save that no statement need be given if the licence was granted in the terms of the application without there having been an objection or a specific request for reasons by any party⁴.

If, however, the CAA believes that it would not be in the interests of national security or relations with other states for reasons to be given, the Secretary of State⁵ may, on notice given by the CAA, direct it to refrain from giving reasons⁶. Further, if the giving to a relevant person⁷ of reasons containing details of the commercial or financial affairs of any other person would cause disadvantage to that person which, by comparison with the advantage to the public and the relevant person of its disclosure to him, is unwarranted, then the CAA may refrain from giving, or may exclude that material from, the statement of reasons⁸.

1 As to the CAA see PARA 50 et seq.

2 As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107.

3 I.e. to the applicant or, as the case may be, the holder or former holder of the licence, and to any other person who has made an objection or has requested a statement of reasons.

4 See the Civil Aviation Act 1982 ss 67(2), 69A(6) (s 69A added by SI 1992/2992).

5 As to the Secretary of State see PARA 33.

6 See the Civil Aviation Act 1982 ss 67(3), 69A(6) (s 69A as added: see note 4).

7 I.e. one of the persons mentioned in note 3.

8 See the Civil Aviation Act 1982 ss 67(3), 69A(6) (s 69A as added: see note 4).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27);

penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/D. THE HEARING AND DECISION/120. Renewal of licences.

120. Renewal of licences.

If the holder of a current air transport licence or route licence¹ applies for the grant of another licence in continuation of or substitution for a current licence, the current licence does not cease to be in force by reason only of its expiration unless the Civil Aviation Authority ('CAA')² has decided the application or the time for appealing has expired or any appeal in respect of the application is determined or abandoned or, if an appeal is successful, the licence granted in consequence of the appeal comes into force³. In the case of a route licence⁴, the current licence does not cease to be in force until such date as is specified by the CAA when giving its decision on the application in question or such later date as the CAA may specify (on one or more occasions) on the application of the holder of the licence in question before the date initially specified⁵.

1 As to the meaning of 'air transport licence' see PARA 106.

2 As to the CAA see PARA 50 et seq.

3 See the Civil Aviation Act 1982 s 65(6).

4 As to the meaning of 'route licence' see PARA 107.

5 See the Civil Aviation Act 1982 ss 65(6), 69A(6), (7)(ca), (7A), (7C) (s 69A added by SI 1992/2992; Civil Aviation Act 1982 s 69(7)(ca), (7A), (7C) added by the Civil Aviation Act 2006 s 7(1)-(3)).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/E. APPEALS/121. Appeals to Secretary of State.

E. APPEALS

121. Appeals to Secretary of State.

Every party¹ to a case before the Civil Aviation Authority ('CAA')² has a right of appeal to the Secretary of State³ from the CAA's decision with respect to an air transport licence⁴ or an application for a licence⁵. An appeal is made by written notice of appeal signed by or on behalf of the appellant, stating the grounds of appeal and the arguments relied on⁶, which must be served⁷ on (1) the Secretary of State⁸; (2) the CAA⁹; (3) each of the parties to the case before the CAA¹⁰; (4) any persons the CAA had decided to exercise its discretion to hear in connection with the case¹¹, whether that person was heard or not¹²; and (5) any person or body consulted¹³ by the CAA¹⁴. The notice of appeal must be served within 21 days from the notification by the CAA of its decision¹⁵.

Any party to the appeal (other than the appellant) and any person or body consulted by the CAA may, within 14 days of service of the notice of the appeal, serve on the Secretary of State a written submission giving reasons why the CAA's decision should or should not be upheld¹⁶. In the appeal proceedings, no person may submit to the Secretary of State evidence which was not before the CAA when it reached its decision¹⁷.

Within 28 days of receiving notice of an appeal, the CAA may make a written submission to the Secretary of State in connection with the appeal, including an amplification and explanation of the reasons for its decision¹⁸. Within 14 days of the expiry of this 28-day period, the appellant may serve upon the Secretary of State a reply to any submission made by any party to the appeal or by the CAA¹⁹.

Before deciding an appeal, the Secretary of State may ask the appellant, any other person who has made a submission, or the CAA to give any amplification or explanation of any submission which he may require²⁰. He may also obtain from the CAA any information, relating to the commercial or financial affairs of the informant, which it withheld from any person having the right to be heard as in its opinion its disclosure was unwarranted; the CAA and the person who gave the information can make written submissions to the Secretary of State in connection with that information²¹.

1 Generally, any person who has the right to be heard is deemed to be a party: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, regs 3(1), 25(1) (amended by SI 1992/2992). See also PARA 115 note 3. However, any person who has a right to be heard by virtue only of the fact that he is a person representative of those who have served objections or representations, whether expressing the views of passengers or shippers of cargo or whether made on the ground of environmental disturbance, do not have a right of appeal: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, regs 25(1)(e), (f), 27(1). In the case of an appeal from a decision rendered at a preliminary hearing for the provisional variation of a licence on the grounds of behaviour damaging to a competitor, reference to every party is a reference to the applicant and the respondent: reg 28(1), (2)(a). As to the provisional variation of a licence for damaging behaviour see PARA 111.

2 As to the CAA see PARA 50 et seq.

3 As to the Secretary of State see PARA 33.

4 As to the meaning of 'air transport licence' see PARA 106.

5 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(1) (amended by the Civil Aviation Act 2006 s 7(4)). There is no right of appeal to the Secretary of State against route licence decisions; affected parties may challenge a decision of the CAA in the courts by judicial review.

6 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(2).

7 As to the service of documents see PARA 94 note 5.

8 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(3)(a).

9 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(3)(b).

10 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(3)(c). In the case of an appeal from a decision as to the provisional variation of a licence on the grounds of behaviour damaging to a competitor (see PARA 111), the notice of appeal must be served on the applicant or respondent, as the case may be: reg 28(2)(b).

11 See under the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 25(2): see PARA 115 note 3.

12 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(3)(d). In the case of an appeal from a decision as to the provisional variation of a licence on the grounds of behaviour damaging to a competitor (see PARA 111), the notice of appeal must be served on those persons whom the CAA may have heard at the preliminary hearing under reg 24(6) (see PARA 111): reg 28(2)(b).

13 See under the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 21: see PARA 114.

14 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(3)(e).

15 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(4). The period is extended if a transcript has been ordered (see reg 27(4)) but reduced to five days in the case of appeal in respect of a provisional variation of a licence on the grounds of behaviour damaging to a competitor (see reg 28(2)(c); and PARA 111) and any reference to a transcript is to be ignored (see reg 28(2)(c)).

Any person having the right to appeal against a decision may require the CAA to furnish him with the names and addresses of the persons described in heads (3)-(5) in the text: see reg 27(5).

16 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(6). Copies of any such submission must be served within 14 days of service of the notice of the appeal on the CAA, the appellant and the persons who have been served with notice of the appeal pursuant to heads (3)-(5) in the text: see reg 27(5).

The period of 14 days is reduced to five working days in the case of appeal in respect of a provisional variation of a licence on the grounds of behaviour damaging to a competitor (see reg 28(2)(d); and PARA 111).

17 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(11).

18 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(7). It must serve a copy of any submission on the appellant and the persons who have been served with notice of the appeal pursuant to heads (3)-(5) in the text: see reg 27(7).

The period of service of the CAA's submission is reduced to eight working days in the case of appeal in respect of a provisional variation of a licence on the grounds of behaviour damaging to a competitor (see reg 28(2)(e); and PARA 111).

19 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(8). Copies of any such reply must also be served on the CAA, the appellant and the persons who have been served with notice of the appeal pursuant to heads (3)-(5) in the text: see reg 27(8). The period of 14 days is reduced to four days in the case of appeal in respect of a provisional variation of a licence on the grounds of behaviour damaging to a competitor (see reg 28(2)(f); and PARA 111).

20 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(10)(a). He must give the appellant, the other parties to the appeal, and the CAA, as the case may be, the opportunity of replying to any such amplification or explanation: reg 27(10)(a).

21 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(10)(b). As to the furnishing of information by the CAA see reg 22; and PARA 114.

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/E. APPEALS/122. Decisions on appeal.

122. Decisions on appeal.

The Secretary of State¹ may uphold the decision of the Civil Aviation Authority ('CAA')² or direct it to rehear the case, or to reverse or to vary its decision³. The CAA, the appellant and persons and bodies served with the notice of appeal must be notified by the Secretary of State of his decision⁴ and the reasons for it, and the CAA must publish the notification⁵.

An appeal to the Secretary of State does not preclude him from consulting foreign authorities in matters relating to national security or foreign relations even though the consultation may relate to matters affecting the appeal⁶. His decision is not invalidated by any procedural irregularity, which he may ask to be righted, save for the service of the appellant's notice of appeal on the Secretary of State within the prescribed⁷ time⁸.

1 As to the Secretary of State see PARA 33.

2 As to the CAA see PARA 50 et seq.

3 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 29(1). The Secretary of State may order the appellant to pay to any other party to the appeal either a specified sum for costs or the taxed amount of the costs: see reg 29(4)(a). Any such costs so required to be taxed may be taxed in the county court on such scale as may be directed: see reg 29(4)(b). Any sum payable under reg 29(4)(a) is recoverable if the county court so orders by execution in that court or otherwise as if payable under a county court order: see reg 29(4)(c). The powers of the county court under reg 29(4) may be exercised by the district judge: see reg 29(4)(d). See **CIVIL PROCEDURE**. As to the taxation of costs see **LEGAL PROFESSIONS** vol 66 (2009) PARA 967 et seq.

4 Ie pursuant to the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(3): see PARA 121.

5 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 29(2). While directing the CAA to rehear a case, the Secretary of State must notify all the relevant persons whether or not the CAA's first decision is to have effect pending its further decision: see reg 29(3).

6 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 29(6). As to national interest and relations with other countries or territories see the Civil Aviation Act 1982 s 6; and PARA 53.

7 Ie under the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 27(4): see PARA 121.

8 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 29(7).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of

leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/F. TRANSFER AND SURRENDER OF LICENCES/123. Transfer of licences.

F. TRANSFER AND SURRENDER OF LICENCES

123. Transfer of licences.

The Civil Aviation Authority ('CAA')¹ may allow the transfer of an air transport licence or route licence² if the sole holder has died³, or in connection with the reconstruction of a body corporate or the amalgamation of any bodies corporate⁴. The procedure is the same as that of an application for the variation of a licence⁵. No transfer is allowed if the CAA would be bound⁶ to refuse to grant a licence to the proposed transferee⁷.

1 As to the CAA see PARA 50 et seq.

2 As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107.

3 See the Civil Aviation Act 1982 ss 67(1), 69A(6) (s 69A added by SI 1992/2992); and the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 30(1)(a) (amended by SI 1992/2992). The person treated as the holder of the licence may apply to the CAA for the transfer of the licence to a person entitled to a beneficial interest in the deceased person's estate: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 30(2)(a).

4 See the Civil Aviation Act 1982 ss 67(1), 69A(6) (s 69A as added: see note 3); and the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 30(1)(b). The person treated as the holder of the licence may apply to the CAA for the substitution of his own name in the licence: see reg 30(2)(b).

5 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 30(4). The application must state the grounds on which it is based and be served on the CAA within 21 days from the day on which the applicant became entitled to make it; if no application is made during that period, the licence ceases at the end of the 21-day period to be treated as if granted to a person other than the grantee: reg 30(3). As to applications for variation see PARAS 116-119. The provisions relating to appeals (ie reg 27 (see PARA 121) and reg 29 (see PARA 122)) also apply: see reg 30(4).

6 Ie under the Civil Aviation Act 1982 s 65(2) or (3): see PARA 116.

7 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 30(5) (amended by SI 1992/2992).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24);

offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/F. TRANSFER AND SURRENDER OF LICENCES/124. Surrender of licences.

124. Surrender of licences.

If revocation or variation of an air transport licence or a route licence¹ has taken effect, or if a route licence ceases to be in force², the Civil Aviation Authority ('CAA')³ may require any person who has the licence in his possession or control to surrender it for cancellation or variation⁴. Any person who fails, without reasonable cause, to comply with any such requirement is guilty of an offence⁵.

1 As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107.

2 I.e. by virtue of the Civil Aviation Act 1982 s 69A(5): see PARA 110.

3 As to the CAA see PARA 50 et seq.

4 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 31 (amended by SI 1992/2992). This does not apply to a route licence which is rendered ineffective during a period of suspension of an operating licence by virtue of the Civil Aviation Act 1982 s 69A(5): Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 31 (as so amended). As to operating licences see PARA 101 et seq.

5 Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 31. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: see reg 31. As to the standard scale see PARA 50 note 8.

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/G. CHARGES/125. Charges.

G. CHARGES

125. Charges.

Charges payable to the Civil Aviation Authority ('CAA')¹ in connection with matters arising under the Civil Aviation Act 1982² in respect of air transport licensing and route licensing are to be found in the scheme published in the CAA's Official Record³.

1 As to the CAA see PARA 50 et seq.

2 See the Civil Aviation Act 1982 s 11; and PARA 69.

3 See *Licensing Airlines in the UK* (CAA's Official Record Series 1). As to the Official Record see PARA 98 note 1.

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (2) LICENSING OF AIR CARRIERS/(iv) Air Transport Licences and Route Licences/H. OFFENCES/126. Offences.

H. OFFENCES

126. Offences.

Any operator¹ who knows, or ought to have known, that an aircraft is flown for the carriage for reward of passengers and cargo without, or in breach of the terms of, an air transport licence or route licence² is guilty of an offence³.

Any other person than an operator who makes available accommodation for the carriage of passengers or cargo on an aircraft on a flight⁴ and who knows, or ought to know, before the flight that the aircraft is to be flown without, or in breach of the terms of, an existing air transport or route licence is guilty of an offence⁵.

In determining whether an offence relating to a flight has been committed by the operator of the aircraft used on the flight, it is immaterial whether the contravention occurred outside the United Kingdom⁶ if the operator committing the offence was a United Kingdom national⁷ or a body incorporated under the law of any part of the United Kingdom or (in the case of an air transport licence only) of a relevant overseas territory⁸, or a person (other than a United Kingdom national or such a body) maintaining a place of business in the United Kingdom⁹. In determining whether an offence relating to a flight has been committed by a person who made available accommodation for the carriage of passengers or cargo on an aircraft on a flight, it is immaterial whether the contravention occurred outside the United Kingdom and that at any relevant time that person was not a United Kingdom national or such a body if any part of the negotiations resulting in the making available of the accommodation in question took place, whether by means of the post or otherwise, in the United Kingdom¹⁰.

If the Civil Aviation Authority ('CAA')¹¹ suspects that an offence is about to take place, it may direct the commander of the aircraft not to take off, or it may detain the aircraft, and failure to comply with any such direction is an offence¹².

Any person who knowingly or recklessly furnishes to the CAA or the Secretary of State¹³ information which is false in a material particular for the purpose of obtaining for himself or any other person the grant, variation or cancellation of a suspension of an air transport or route licence is guilty of an offence¹⁴.

1 As to the meaning of 'operator' see PARA 437.

2 As to the meanings of 'air transport licence' and 'route licence' see PARAS 106, 107.

3 See the Civil Aviation Act 1982 ss 64(5)(a), 69A(6) (s 69A added by SI 1992/2992). A person guilty of an offence under the Civil Aviation Act 1982 s 64(5) or s 65(7) is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or to both: ss 64(8), 69A(6) (as so added). As to the statutory maximum see PARA 43 note 12.

4 As to the meaning of 'flight' see PARA 106 note 5.

5 See the Civil Aviation Act 1982 ss 64(5)(b), 69A(6) (s 69A as added: see note 3). For the penalty see note 3.

6 As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 As to the meaning of 'United Kingdom national' see PARA 52 note 2.

- 8 As to the meaning of 'relevant overseas territory' see PARA 110 note 20.
- 9 See the Civil Aviation Act 1982 ss 64(6), 69A(6) (s 64(6) amended by the Statute Law (Repeals) Act 1995; Civil Aviation Act 1982 s 69A(6) as added (see note 3)).
- 10 See the Civil Aviation Act 1982 ss 64(6), 69A(6) (s 69A as added: see note 3).
- 11 As to the CAA see PARA 50 et seq.
- 12 See the Civil Aviation Act 1982 ss 64(7), 69A(6) (s 69A as added: see note 3). For the penalty see note 3. As to rights of detention in other circumstances see PARA 436.
- 13 As to the Secretary of State see PARA 33.
- 14 See the Civil Aviation Act 1982 ss 67(6), 69A(6) (s 69A as added: see note 3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or to both: ss 67(6)(a), (b), 69A(6) (s 69A as so added).

UPDATE

98-126 Licensing of Air Carriers

SI 1992/2992 revoked: Operation of Air Services in the Community Regulations 2009, SI 2009/41 (amended by SI 2009/3015). SI 2009/41 Pt 1 (regs 4-13) deals with operating licences; Pt 2 (regs 14-21) with leased aircraft; Pt 3 (regs 22-25) with access to routes; Pt 4 (regs 26, 27) with provision of information; and Pt 5 (regs 28-32) with penalties. In particular, SI 2009/41 relate to existing operating licences (reg 4); competent licensing authority in relation to operating licences (reg 5); proof of good repute (reg 6); suspension and revocation (reg 7); date of revocation or suspension of an operating licence (reg 8); appeal to the Secretary of State (reg 9); restriction on carriage of passengers by an air carrier (reg 10); offences relating to operating licences (regs 11-13); registration of an aircraft (reg 14); approval for and restriction on use of leased aircraft (regs 15-18); offences relating to leased aircraft (regs 19-21); competent authority in relation to access to intra-Community air services (reg 22); Secretary of State's duty (reg 23); restriction on the operation of air services (reg 24); offences (reg 25); requirement to provide information (reg 26); offences (reg 27); penalties (reg 28); offences by body corporate (reg 29); power to direct that an aircraft must not fly (regs 31, 32).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (3) PROVISION OF ACCOMMODATION IN AIRCRAFT/127. Air travel organiser's licence.

(3) PROVISION OF ACCOMMODATION IN AIRCRAFT

127. Air travel organiser's licence.

Regulations¹ provide that only persons of the following descriptions may make available flight accommodation² in the United Kingdom³:

- 86 (1) the operator⁴ of the relevant aircraft (an 'operator')⁵;
- 87 (2) a person who holds a licence authorising him to do so and the terms of the licence are complied with (a 'licence holder')⁶;
- 88 (3) a person who acts as agent on behalf and with the authority of a disclosed identified principal who is a licence holder (an 'agent for a licence holder')⁷;
- 89 (4) a person who is exempted⁸ by the Civil Aviation Authority ('CAA')⁹ from the need to hold a licence (an 'exempted person')¹⁰; or
- 90 (5) a person who acts as a ticket provider¹¹.

No person in the United Kingdom may hold himself out as a person who may make available flight accommodation unless (a) he is entitled to make available that accommodation as an operator, a licence holder, an agent for a licence holder or an exempted person, or he is capable of supplying a valid ticket¹² for any flight accommodation in respect of which he holds himself out as being able to make available¹³; and (b) at all times in the course of holding himself out as a person who may make available flight accommodation, he discloses the capacity in which he is entitled to make that accommodation available¹⁴.

A person who contravenes the provisions described above commits an offence¹⁵.

The CAA may by instrument exempt from the need to hold a licence any person or class or description of persons specified in it, and may revoke or vary the instrument by subsequent instrument¹⁶.

1 The regulations made under the Civil Aviation Act 1982 s 71.

2 'Flight accommodation' means accommodation for the carriage of a person on a flight by an aircraft, whether or not registered in the United Kingdom, in any part of the world: Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 1(2) (amended by SI 1997/2912).

As to the requirement for persons applying for licences by virtue of the Civil Aviation Act 1982 s 71 to make contributions to the Air Travel Trust see s 71A; and PARA 128.

3 See the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 3(1) (substituted by SI 2003/1741). As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 As to the meaning of 'operator' see PARA 437.

5 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 3(1)(a) (as substituted: see note 3).

6 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 3(1)(b) (as substituted: see note 3). A licence is not required for an agent facilitating the acquisition of flight accommodation: see *R (on the application of Jet Services Ltd) v Civil Aviation Authority* [2001] EWCA Civ 610, [2001] 2 All ER (Comm) 769. As to the validity of guidance issued by the CAA to air travel organisers see *R (on the application of the Association of British Travel Agents Ltd) v Civil Aviation Authority* [2006] EWCA Civ 1356, [2007] 2 All ER (Comm) 898, [2006] All ER (D) 191 (Oct) (guidance invalid: withdrawn).

7 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 3(1)(c) (as substituted: see note 3). A person must not make available flight accommodation which constitutes a component of a package in the capacity of an agent for a licence holder except where all the components of the package are made available under a single contract between the licence holder and the customer: Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 3(1A)(a) (reg 3(1A) added by SI 2003/1741). 'Package' means the pre-arranged combination of at least two of the following components when sold or offered for sale at an inclusive price and when the service covers a period of more than 24 hours or includes overnight accommodation: (1) transport; (2) accommodation; (3) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package; and (a) the submission of separate accounts for different components does not cause the arrangements to be other than a package; (b) the fact that a combination is arranged at the request of the consumer and in accordance with his specific instructions (whether modified or not) does not of itself cause it to be treated as other than pre-arranged: Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 1(2) (definition added by SI 2003/1741).

8 lie under the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 5.

9 As to the CAA see PARA 50 et seq.

10 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 3(1)(d) (as substituted: see note 3).

11 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 3(1)(e) (as substituted: see note 3). 'Ticket provider' means a person who, in respect of the making available of flight accommodation, supplies to the person from whom payment is accepted a valid ticket either before accepting payment or, following acceptance of payment, by the specified method: Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 1(2) (definition added by SI 1994/2912). 'Valid ticket' means a ticket which is, without the need for any further payment but otherwise subject to its terms and conditions, valid for travel on the intended flight: Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 1(2). 'Specified method' means (1) in the case of a document required to be given to a person from whom payment is accepted and who is present, by handing the required document to him in person at the time such payment is made; and (2) in any other case, by sending the required document by post or by some other means no less expeditious as soon as reasonably practicable and in any event not later than the following working day: reg 1(2) (definition added by SI 1994/2912). A person must not make available flight accommodation which constitutes a component of a package in the capacity of a ticket provider: Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 3(1A)(b) (as added: see note 7).

12 lie in accordance with the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 4: see PARA 129.

13 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 3(2)(a).

14 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 3(2)(b).

15 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 15(2). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: reg 15(2). As to the statutory maximum see PARA 43 note 12.

16 See the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 5.

UPDATE

127 Air travel organiser's licence

NOTE 7--See *Civil Aviation Authority v Travel Republic Ltd* [2010] EWHC 1151 (Admin), [2010] All ER (D) 188 (May) (subjective perception of customer not conclusive as to whether flight accommodation part of package).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (3) PROVISION OF ACCOMMODATION IN AIRCRAFT/128. Contributions by air travel organisers to Air Travel Trust.

128. Contributions by air travel organisers to Air Travel Trust.

The Secretary of State may by regulations make provision for and in connection with requiring persons applying for licences¹ to make contributions to the Air Travel Trust² in relation to the periods for which their licences are to be issued³. The regulations may, in particular, make provision⁴:

- 91 (1) prescribing the factors by reference to which such contributions are to be calculated by the Civil Aviation Authority ('CAA') (other than the rate by reference to which they are to be so calculated)⁵;
- 92 (2) authorising the CAA, with the approval of the Secretary of State and after complying with prescribed consultation requirements, to set in respect of different descriptions of persons the rates by reference to which such contributions are to be calculated and the dates from which those rates are to have effect⁶;
- 93 (3) requiring contributions to be paid, or undertakings as to payment of contributions to be given, in advance of licences being issued⁷;
- 94 (4) requiring licence holders to pay additional amounts by way of contributions where the applicable contribution rate increases during the term of their licences⁸;
- 95 (5) requiring additional amounts to be paid by way of contributions, or undertakings as to the payment of such amounts to be given, in advance of licences being varied⁹;
- 96 (6) for the CAA, in accordance with the regulations, to reimburse to persons, or credit persons with, amounts paid by them by way of contributions, and for the CAA to exercise in that connection such discretion as is conferred by the regulations¹⁰;
- 97 (7) for contributions that are not paid in accordance with the regulations or any undertaking as to payment to bear interest at the rate specified in the regulations, and for such contributions and interest to be recoverable as debts due to the Air Travel Trust¹¹;
- 98 (8) for the CAA to act as the agent of the trustees of the Air Travel Trust in collecting and recovering contributions, and for the reimbursement of costs incurred by the CAA in so acting¹²;
- 99 (9) for the CAA, after complying with prescribed consultation requirements, to suspend, either generally or in relation to any description of persons, the requirement to make contributions in respect of a period¹³;
- 100 (10) for the CAA to exempt persons, or descriptions of persons, from the requirement to make contributions on such conditions as the CAA, after consulting the Secretary of State, thinks fit¹⁴;
- 101 (11) for requiring the CAA to publish prescribed matters in the prescribed manner¹⁵;
- 102 (12) for creating criminal offences to be triable summarily and punishable with a fine not exceeding level 5 on the standard scale or such lower amount as is prescribed¹⁶.

Such regulations may authorise the CAA to refuse to issue a licence to a person, to refuse to vary a licence held by a person, or to vary, suspend or revoke a licence held by a person, where that person has failed to comply with a prescribed requirement of such regulations or has breached an undertaking given as mentioned in head (3) or (5)¹⁷.

Before making any such regulations, the Secretary of State must consult the CAA and the trustees of the Air Travel Trust¹⁸. Before responding to the consultation, the CAA must consult the following persons so far as it considers it reasonably practicable to do so: (a) persons who hold air travel organisers licences¹⁹; and (b) any other person or body appearing to it to have an interest in the matter²⁰.

1 le under the Civil Aviation Act 1982 s 71 (see PARA 127).

2 'Air Travel Trust' means the trust established by that name by a deed dated 5 January 2004 and made between the Secretary of State for Transport and the persons described as the Original Trustees: Civil Aviation Act 1982 s 71A(5) (ss 71A, 71B added by the Civil Aviation Act 2006 s 10); Civil Aviation Act 2006 s 11(3). The Secretary of State must lay before Parliament a copy of every report that he receives from the trustees of the Air Travel Trust by virtue of the terms of the trust deed: Civil Aviation Act 2006 s 11(1). No court may, by virtue of any enactment whenever passed or made, vary the terms of the deed establishing the Air Travel Trust unless the variation is sought by, or with the consent of, the Secretary of State: s 11(2).

3 Civil Aviation Act 1982 s 71A(1) (s 71A as added: see note 2). See the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007, SI 2007/2999.

4 Civil Aviation Act 1982 s 71A(2) (s 71A as added: see note 2).

5 Civil Aviation Act 1982 s 71A(2)(a) (s 71A as added: see note 2).

6 Civil Aviation Act 1982 s 71A(2)(b) (s 71A as added: see note 2).

7 Civil Aviation Act 1982 s 71A(2)(c) (s 71A as added: see note 2).

8 Civil Aviation Act 1982 s 71A(2)(d) (s 71A as added: see note 2).

9 Civil Aviation Act 1982 s 71A(2)(e) (s 71A as added: see note 2).

10 Civil Aviation Act 1982 s 71A(2)(f) (s 71A as added: see note 2).

11 Civil Aviation Act 1982 s 71A(2)(g) (s 71A as added: see note 2).

12 Civil Aviation Act 1982 s 71A(2)(h) (s 71A as added: see note 2).

13 Civil Aviation Act 1982 s 71A(2)(i) (s 71A as added: see note 2).

14 Civil Aviation Act 1982 s 71A(2)(j) (s 71A as added: see note 2).

15 Civil Aviation Act 1982 s 71A(2)(k) (s 71A as added: see note 2).

16 Civil Aviation Act 1982 s 71A(2)(l) (s 71A as added: see note 2).

17 Civil Aviation Act 1982 s 71A(3) (s 71A as added: see note 2). Section 4 (see PARA 52) does not apply in relation to any functions conferred on the CAA by regulations under s 71A: s 71A(4) (s 71A as so added).

18 Civil Aviation Act 1982 s 71B(1) (s 71B as added: see note 2).

19 le persons who hold licences by virtue of the Civil Aviation Act 1982 s 71.

20 Civil Aviation Act 1982 s 71B(2) (s 71B as added: see note 2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (3) PROVISION OF ACCOMMODATION IN AIRCRAFT/129. Provision of flight accommodation, acceptance of payment and provision of receipt.

129. Provision of flight accommodation, acceptance of payment and provision of receipt.

A holder of an air travel organiser's licence ('ATOL')¹ or agent of a licence holder may not accept payment in respect of the making available of flight accommodation² unless he supplies, by the specified method³, to the person from whom such payment is accepted, an ATOL receipt⁴ or an ATOL confirmation invoice⁵.

Where an agent of a licence holder supplies an ATOL receipt, he must notify, by the specified method, the licence holder on whose behalf he is acting⁶. Such notification must include sufficient information to enable the licence holder to issue an ATOL confirmation invoice⁷. Upon receipt of the ATOL confirmation invoice from the licence holder, the agent must forward it by the specified method to the person to whom he supplied the relevant ATOL receipt⁸.

A person acting as a ticket provider⁹ may not make available flight accommodation except to a person who he has reasonable grounds for believing will be the end user¹⁰ of that flight accommodation¹¹.

Before a payment for flight accommodation is accepted from or on behalf of a person who is not present at the time, that person must be advised, by some appropriate means, of the name of the person accepting the payment, the capacity in which he is making available the accommodation and, if he is acting as an agent for a licence holder, the name of the licence holder and the number of the licence¹².

A person who contravenes the provisions described above commits an offence¹³.

1 As to the requirement for air travel organisers' licences see PARA 127.

2 As to the meaning of 'flight accommodation' see PARA 127 note 2.

3 As to the meaning of 'specified method' see PARA 127 note 11.

4 'ATOL receipt' means a document which complies with requirements for such a document published from time to time by the Civil Aviation Authority ('CAA') in its Official Record: Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 1(2). As to the CAA see PARA 50 et seq. As to the Official Record see PARA 98 note 1.

See *Air Travel Organisers' Licensing* (CAA's Official Record Series 3), which is amended from time to time and contains guidance for applicants and licence holders (including information relating to the process of applying for a first licence, criteria for grant of licence, duration and renewal of licences, licence variations, terms and conditions of licences, and charges) and schedules of legal instruments in relation to certain aspects of licensing.

5 See the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 4(1), (2)(a). 'ATOL confirmation invoice' means a document which complies with requirements for such a document published from time to time by the CAA in its Official Record: reg 1(2). See also note 4.

6 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 4(2)(b).

7 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 4(2)(b).

8 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 4(2)(b).

9 As to ticket providers see PARA 127.

10 'End user' means a person who either makes use of flight accommodation for travel in person or who, without accepting any payment, provides it to another person who uses it for travel in person: Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 1(2) (definition added by SI 1997/2912).

11 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 4(3) (substituted by SI 1997/2912).

12 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 4(4).

13 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 15(2). A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: reg 15(2). As to the statutory maximum see [PARA 43](#) note 12.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (3) PROVISION OF ACCOMMODATION IN AIRCRAFT/130. Applications in relation to air travel organisers' licences.

130. Applications in relation to air travel organisers' licences.

An application for the grant of an air travel organiser's licence ('ATOL')¹ must be made to the Civil Aviation Authority ('CAA')² in writing³. Where such an application is made, the CAA may grant a licence in the terms requested, grant a licence with modifications to the terms requested, or refuse to grant a licence⁴.

An application may be made by the holder of a licence for it to be revoked, suspended or varied at any time, but a licence holder may not apply for the variation of a schedule of terms⁵ included in the licence⁶.

The CAA may refuse to consider an application unless it is accompanied by the appropriate charge⁷.

1 As to the requirement for air travel organisers' licences see PARA 127.

2 As to the CAA see PARA 50 et seq.

3 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 6(1)(a).

4 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 6(1)(a).

5 See under the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 10: see PARA 134.

6 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 7(1).

7 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, regs 6(1)(b), 7(2). The appropriate charge is the charge payable under the Civil Aviation Act 1982 s 11 (see PARA 69): see the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, regs 6(1)(b), 7(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (3) PROVISION OF ACCOMMODATION IN AIRCRAFT/131. Criteria for decision.

131. Criteria for decision.

Before granting an air travel organiser's licence ('ATOL')¹, the Civil Aviation Authority ('CAA')² must be satisfied that the applicant is a fit person to make available flight accommodation³. In determining whether the applicant is a fit person the CAA must have regard to his and his employees' past activities generally and, where the applicant is a body corporate, to the past activities generally of the persons appearing to the CAA to control that body⁴. The CAA is not obliged to refuse a licence on the grounds that it considers that the applicant has insufficient experience in making available accommodation for the carriage of persons on flights⁵.

The CAA may refuse to grant a licence in respect of an applicant if it is not satisfied that the resources of the applicant and the financial arrangements made by him are adequate for discharging his actual and potential obligations in respect of the activities in which he is engaged and in which he may be expected to engage if he is granted the licence⁶.

The CAA may refuse to grant a licence (or a variation to a licence) if, after complying with the procedure for determining applications⁷, it is not satisfied that the applicant has complied with any of the requirements as to contributions⁸ to the Air Travel Trust⁹.

The CAA must revoke, suspend or vary a licence (whichever it thinks appropriate in the circumstances) if it is no longer satisfied that the holder of the licence is a fit person to make available flight accommodation for the carriage of persons on flights under the authority of the licence¹⁰, and may revoke, suspend or vary a licence if it is not or is no longer satisfied that his resources and financial arrangements are adequate for discharging his actual and potential obligations in respect of the activities in which he is engaged¹¹, or if it is no longer satisfied that the holder has complied with any of the requirements as to contributions to the Air Travel Trust¹².

1 As to the requirement for air travel organisers' licences see PARA 127.

2 As to the CAA see PARA 50 et seq.

3 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 6(2)(a). As to the meaning of 'flight accommodation' see PARA 127 note 2.

4 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 6(2)(a).

5 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 6(2)(a).

6 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 6(2)(b).

7 Ie the procedure prescribed in the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 9 (see PARA 132).

8 Ie any of the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007, SI 2007/2999, reg 7, 8 or 9.

9 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 6(2)(c) (added by SI 2007/2999). As to the Air Travel Trust see PARA 128.

10 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 7(3)(a).

11 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 7(3)(b).

12 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 7(3)(c) (added by SI 2007/2999).

The Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 7(3) is to be construed as conferring on the CAA power to provide, by a notice in writing served on the holder of the licence, that the licence is not effective during a period specified in the notice; and while a licence is ineffective by virtue of such a notice the CAA may, by a further notice in writing served on the holder of the licence, provide that the licence is effective on and after a date specified in the further notice, but the further notice does not prejudice the CAA's powers to suspend the licence again or to revoke or vary it: reg 7(4). Any document to be served on any person under the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, may be served (1) by delivering it to him; (2) by leaving it at his proper address; (3) by sending it by post to him at that address; or (4) by sending it to him at that address by telex or by facsimile transmission or any other similar means which produce a document containing a text of the communication, in which event the document is to be regarded as served when it is received: reg 1(3). Where the person is a body corporate, the document may be served upon the secretary of that body: reg 1(3). For these purposes, the proper address of any person to whom or on whom any document is to be served is, in the case of a body corporate, the registered or principal office of that body and in any other case, the last known address of that person: reg 1(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (3) PROVISION OF ACCOMMODATION IN AIRCRAFT/132. Procedure for determining applications.

132. Procedure for determining applications.

The functions of the Civil Aviation Authority ('CAA')¹ to make a decision to revoke, suspend or vary an air travel organiser's licence ('ATOL')² otherwise than on the application of the holder, to grant or vary a licence in terms other than those requested by the applicant, or to refuse to grant a licence, are functions which may not be performed on behalf of the CAA by any other person³. For the purpose of making any such decision, the quorum of the CAA is one member⁴.

Where the CAA proposes to make such a decision, it must serve⁵ on the applicant for, or the holder of, the licence not less than 21 days' notice of the proposal and the reasons for it; and it must consider any representation the applicant or the holder may serve on the CAA before the expiration of the notice⁶. Where the CAA makes a decision after such a proposal, it must furnish a statement of its reasons for the decision to the applicant for the licence or to the holder or former holder of it⁷.

1 As to the CAA see PARA 50 et seq.

2 As to the requirement for air travel organisers' licences see PARA 127. As to the revocation, suspension and variation of licences see PARA 130.

3 See the Civil Aviation Act 1982 s 7(1); and the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 8(2).

4 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 8(2).

5 As to the service of documents see PARA 131 note 12.

6 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 9(1). However, in certain circumstances, the CAA may suspend a licence notwithstanding that it has not complied with the requirements of reg 9(1): see reg 9(2).

7 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 9(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (3) PROVISION OF ACCOMMODATION IN AIRCRAFT/133. Renewal of air travel organisers' licences.

133. Renewal of air travel organisers' licences.

If the holder of a current air travel organiser's licence ('ATOL')¹ applies² for the grant of another licence in continuation of, or in substitution for, his current licence, the current licence does not cease to be in force by reason only of the expiration of its term but remains in force until the Civil Aviation Authority ('CAA')³ gives its decision on the application⁴. The application must contain such particulars with respect to such matters relating to the licence holder's fitness, resources and financial arrangements as the CAA may have specified in a notice served⁵ on him not less than four months before the expiration of the term of the current licence, or in the case of a licence having a term of less than six months, at the time of the grant of the licence⁶. The application must be accompanied by the appropriate charge⁷. The application must be served not less than three months (or half the term of the current licence, whichever is the less) before the expiration of the terms of the current licence⁸.

1 As to the requirement for air travel organisers' licences see PARA 127.

2 As to applications for air travel organisers' licences see PARAS 130-132.

3 As to the CAA see PARA 50 et seq.

4 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 6(3). This provision does not apply where an application is withdrawn, and is without prejudice to the CAA's power to revoke, suspend or vary the current licence: reg 6(3). As to the revocation, suspension and variation of licences see PARA 130.

5 As to the service of documents see PARA 131 note 12.

6 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 6(3)(a).

7 Ie under the Civil Aviation Act 1982 s 11: see PARA 69.

8 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 6(3)(b), (c).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (3) PROVISION OF ACCOMMODATION IN AIRCRAFT/134. Variation of schedule of terms.

134. Variation of schedule of terms.

If the Civil Aviation Authority ('CAA')¹ establishes any schedule of terms and includes in an air travel organiser's licence ('ATOL')² a term that the licence holder must comply with that schedule as varied from time to time, the CAA may at any time propose to vary that schedule, any such proposal then being treated as a proposal for the variation of every licence which contains such a condition relating to that schedule³. When any licence contains such a condition relating to a schedule, the CAA must publish that schedule and any variation of it in its Official Record or otherwise⁴.

1 As to the CAA see PARA 50 et seq.

2 As to the requirement for air travel organisers' licences see PARA 127.

3 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 10(1).

4 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 10(2). As to the Official Record see PARA 98 note 1.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (3) PROVISION OF ACCOMMODATION IN AIRCRAFT/135. Appeals.

135. Appeals.

An appeal lies to a county court from any decision of the Civil Aviation Authority ('CAA')¹ that a person is not a fit person to hold an air travel organiser's licence ('ATOL')². The CAA is a respondent to any such appeal³. If the court is satisfied on the evidence submitted to the CAA that the CAA was wrong in deciding as it did, the court may reverse the CAA's decision and the CAA must give effect to the court's determination⁴.

1 As to the CAA see PARA 50 et seq.

2 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 11(1). As to the requirement for air travel organisers' licences see PARA 127.

For the purposes of any provision relating to the time within which an appeal may be brought, the CAA's decision is deemed to have been taken on the date on which the CAA furnished a statement of its reasons for the decision to the applicant for the licence or, as the case may be, the holder or former holder of it: reg 11(4).

3 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 11(3).

4 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 11(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (3) PROVISION OF ACCOMMODATION IN AIRCRAFT/136. Transfer of air travel organisers' licences.

136. Transfer of air travel organisers' licences.

If the sole holder of an air travel organiser's licence ('ATOL')¹, being an individual, dies, the licence is treated from the time of his or her death as if it had been granted to his legal personal representative².

The legal personal representative may apply to the Civil Aviation Authority ('CAA')³ for the transfer of the licence to any person entitled to a beneficial interest in the deceased's estate, including himself in his personal capacity if he is in that capacity entitled to such an interest⁴. The application must state the grounds on which it is based and must be served⁵ on the CAA within 20 days from the date the applicant first became entitled to make it, and if no application is made within that period the licence ceases to be treated as if granted to a person other than the person to whom it was granted⁶.

However, the CAA may not grant an application for such a transfer if it would be bound⁷ to refuse the application if it were an application for the grant of a licence to that person⁸.

1 As to the requirement for air travel organisers' licences see PARA 127.

2 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 12(1). 'Legal personal representative' means a person constituted executor, administrator or other representative of a deceased person by probate, administration or other instrument: see reg 12(5). See also **EXECUTORS AND ADMINISTRATORS**.

3 As to the CAA see PARA 50 et seq.

4 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 12(2).

5 As to the service of documents see PARA 131 note 12.

6 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 12(3).

7 Ie under the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 6(2)(a): see PARA 131.

8 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 12(4). In such circumstances, the provisions relating to appeals (see reg 11; and PARA 135) apply: reg 12(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (3) PROVISION OF ACCOMMODATION IN AIRCRAFT/137. Surrender of air travel organisers' licences.

137. Surrender of air travel organisers' licences.

The Civil Aviation Authority ('CAA')¹ may require any person who has possession or control of an air travel organiser's licence ('ATOL')² which has been revoked or varied to surrender it for cancellation or variation³. Failure to comply with such a requirement, without reasonable cause, is an offence⁴.

1 As to the CAA see PARA 50 et seq.

2 As to the requirement for air travel organisers' licences see PARA 127.

3 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 13.

4 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, reg 15(1). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: reg 15(1). As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/ (3) PROVISION OF ACCOMMODATION IN AIRCRAFT/138. Contravention of the terms of a licence and furnishing of false information.

138. Contravention of the terms of a licence and furnishing of false information.

It is an offence for any person to contravene any term of an air travel organiser's licence ('ATOL')¹ held by him², or give, by whatever means, an indication direct or indirect that he holds a licence which he does not in fact hold³.

It is also an offence for any person to knowingly or recklessly furnish to the Civil Aviation Authority ('CAA')⁴ any information which is false in a material particular, for the purpose of obtaining for himself or another person a licence or a variation of a licence or the cancellation of the suspension of a licence⁵.

1 As to the requirement for air travel organisers' licences see PARA 127.

2 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, regs 14(1), 15(2). Regulation 14(1) is expressed to be without prejudice to the provisions of reg 3(1)(b) (see PARA 127): reg 14(1).

A person guilty of such an offence is liable on summary conviction to a fine of an amount not exceeding the statutory maximum or on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: reg 15(2). As to the statutory maximum see PARA 43 note 11.

3 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, regs 14(2), 15(2). See note 2.

4 As to the CAA see PARA 50 et seq.

5 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995, SI 1995/1054, regs 14(3), 15(2). See note 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(i) Requirement for a Licence/139. Restrictions on providing services.

(4) LICENSING OF AIR TRAFFIC SERVICES

(i) Requirement for a Licence

139. Restrictions on providing services.

A person commits an offence if he provides air traffic services in respect of a managed area¹. However, this does not apply if the person (1) is authorised by an exemption² to provide the services or acts as an employee or agent of a person who is authorised by an exemption to provide the services³; or (2) holds a licence⁴ authorising him to provide the services or acts as an employee or agent of a person who is authorised by a licence to provide the services⁵. Further, it does not apply if the services are provided by the Civil Aviation Authority in pursuance of air navigation directions⁶.

1 Transport Act 2000 s 3(1). As to the meaning of 'air traffic services' see PARA 34 note 4. 'Managed areas' are (1) the United Kingdom; (2) any area which is outside the United Kingdom but in respect of which the United Kingdom has undertaken under international arrangements to provide air traffic services: s 40(1)(f), (3). For these purposes, air traffic services are to be treated as provided at the place from which they are provided, and air traffic services may be provided in respect of a managed area whether or not the aircraft concerned is in that area when they are provided: s 3(6). As to the meaning of 'United Kingdom' see PARA 30 note 1.

A person who commits an offence under s 3 is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine: s 3(7). No proceedings may be started for an offence under these provisions except by or on behalf of the Secretary of State, or the Civil Aviation Authority ('CAA') acting with his consent: s 3(8). As to the statutory maximum see PARA 43 note 12. As to the Secretary of State see PARA 33. As to the CAA see PARA 50 et seq.

2 Is an exemption under the Transport Act 2000 Pt I Ch I (ss 1-40): s 40(1)(c), (4). See PARA 140.

3 Transport Act 2000 s 3(2), (3).

4 A 'licence' is a licence under the Transport Act 2000 Pt I Ch I, and references to a licence holder are to be construed accordingly: s 40(1)(d), (e), (5). Licence holders are treated as statutory undertakers for certain purposes: see PARA 216.

5 Transport Act 2000 s 3(2), (4).

6 Transport Act 2000 s 3(2), (5). The reference in the text to directions is a reference to directions made under s 66(1) (see PARA 58): s 3(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(i) Requirement for a Licence/140. Exemptions.

140. Exemptions.

The Secretary of State¹ may by order grant an exemption authorising the provision of air traffic services² in respect of a managed area³. An exemption may be granted (1) to a particular person or to persons of a specified description or to all persons⁴; (2) in respect of air traffic services of one or more specified descriptions⁵; (3) in respect of air traffic services provided in specified circumstances⁶; (4) in respect of one or more specified areas (any of which may consist of all or part of a managed area)⁷; (5) subject to such conditions as may be specified⁸. An exemption continues in force for the period specified in or determined by or under it, unless it previously ceases to have effect in accordance with its provisions⁹.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'air traffic services' see PARA 34 note 4.

3 Transport Act 2000 s 4(1). As to the meaning of 'managed area' see PARA 139 note 1.

The power to make an order under s 4 is exercisable only after consultation with the Civil Aviation Authority ('CAA'): s 103(7). As to orders see further PARA 34 note 4. As to the orders made under s 4 see the Air Traffic Services (Exemption) Order 2001, SI 2001/287. As to the CAA see PARA 50 et seq.

4 Transport Act 2000 s 4(2)(a). An exemption granted to persons of a specified description must be published in such manner as the Secretary of State thinks appropriate for bringing it to the attention of persons of that description: s 4(3).

5 Transport Act 2000 s 4(2)(b).

6 Transport Act 2000 s 4(2)(c).

7 Transport Act 2000 s 4(2)(d).

8 Transport Act 2000 s 4(2)(e).

9 Transport Act 2000 s 4(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(i) Requirement for a Licence/141. Licences generally.

141. Licences generally.

A licence¹ may be granted in respect of air traffic services² of one or more specified descriptions or in respect of one or more specified areas (any of which may consist of all or part of a managed area)³. A licence may also be granted to a company authorising it to provide air traffic services in respect of a managed area, but such a licence is not valid unless it is granted to a company which is limited by shares and formed and registered under the Companies Act 1985⁴, or an existing company⁵.

A licence is not valid unless it is in writing⁶. It continues in force for the period specified in it or determined by or under it, unless it previously ceases to have effect in accordance with its provisions⁷. A licence may not be transferred⁸.

1 As to the meaning of 'licence' see PARA 139 note 4.

2 As to the meaning of 'air traffic services' see PARA 34 note 4.

3 Transport Act 2000 s 5(2). As to the meaning of 'managed area' see PARA 139 note 1.

4 Ie under the Companies Act 1985: see **COMPANIES** vol 14 (2009) PARA 24 et seq.

5 Transport Act 2000 s 5(1), (4). The reference to an existing company in the text is a reference to an existing company within the meaning given by the Companies Act 1985 s 735(1) (see **COMPANIES** vol 14 (2009) PARA 24): Transport Act 2000 s 5(4).

6 Transport Act 2000 s 5(3).

7 Transport Act 2000 s 5(5).

8 Transport Act 2000 s 5(6).

UPDATE

141 Licences generally

NOTES 4, 5--Transport Act 2000 s 5(4) amended: SI 2009/1941.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(i) Requirement for a Licence/142. Grant of licences.

142. Grant of licences.

A licence¹ may be granted by (1) the Secretary of State² after consulting the Civil Aviation Authority ('CAA')³; (2) the CAA with the consent of the Secretary of State⁴; or (3) the CAA in accordance with a general authority given by the Secretary of State⁵. The licence authority is the Secretary of State or the CAA, depending on the person to whom it falls to grant the licence⁶.

An application for a licence must be made in the prescribed⁷ manner, must contain or be accompanied by prescribed information, must be accompanied by the application fee⁸ (if any), and must, if the licence authority so requires, be published by the applicant in the prescribed manner notified to it by the licence authority⁹. A person commits an offence if in making an application he makes a statement which he knows to be false in a material particular, or he recklessly makes a statement which is false in a material particular¹⁰.

On an application the licence authority may grant or refuse the licence¹¹. Before granting or refusing a licence, the licence authority must publish a notice in such manner as the authority thinks appropriate for bringing it to the attention of persons likely to be affected by the grant or refusal, must serve a copy of the notice¹² on the applicant, and must consider any representations made in accordance with the notice, and not withdrawn¹³. The notice must state either that the licence authority proposes to grant the licence or that it proposes to refuse it and (in either case) the reasons for so proposing, and must state the period (being not less than 28 days starting with the date of publication of the notice) within which representations may be made regarding the proposed grant or refusal¹⁴. As soon as practicable after granting a licence the grantor must send a copy to the CAA, if the grantor is the Secretary of State, or to the Secretary of State, if the grantor is the CAA¹⁵.

1 As to the meaning of 'licence' see PARA 139 note 4.

2 As to the Secretary of State see PARA 33.

3 Transport Act 2000 s 6(1)(a). As to the CAA see PARA 50 et seq. As to the grant of licences before 1 May 2001 (ie the date of the coming into force of s 3) see s 6(8).

The Secretary of State has granted a licence to National Air Traffic Services ('NATS') (En-route) Limited authorising it to provide air traffic services in and in respect of certain designated areas: see the Air Traffic Services Licence for NATS (En-route) Limited, made under the Transport Act 2000 s 6. The designated areas are 'the En route (UK) Area' and the 'En route (Oceanic) Area', which are defined in Schs 1, 2 to the licence.

4 Transport Act 2000 s 6(1)(b).

5 Transport Act 2000 s 6(1)(c). A general authority may be given on condition that the CAA complies with specified requirements, whether as to consulting the Secretary of State or obtaining his consent before granting a licence, as to the provisions to be included in a licence, or otherwise: s 6(2).

6 Transport Act 2000 s 6(9).

7 'Prescribed' means prescribed by regulations made by the Secretary of State: Transport Act 2000 s 6(11). The power to make regulations under s 6 is exercisable only after consultation with the CAA: s 103(9). As to orders see further PARA 34 note 4. At the date at which this volume states the law no regulations had been made under s 6.

8 The application fee is the prescribed fee, if the licence authority is the Secretary of State, or the charge determined under a scheme or regulations made under the Civil Aviation Act 1982 s 11 (see PARA 69), if the licence authority is the CAA: Transport Act 2000 s 6(10).

9 Transport Act 2000 s 6(3).

10 See the Transport Act 2000 s 101(1). A person who commits such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine: s 101(3). See also PARA 81 note 10. As to the statutory maximum see PARA 43 note 12.

11 Transport Act 2000 s 6(4).

12 As to service of documents see PARA 81 note 13.

13 Transport Act 2000 s 6(5).

14 Transport Act 2000 s 6(6).

15 Transport Act 2000 s 6(7).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(i) Requirement for a Licence/143. Provisions of a licence.

143. Provisions of a licence.

A licence¹ may include such provisions as the licence authority² thinks are necessary or expedient, and a provision need not relate to services authorised by the licence³. In particular, provision of the following kinds may be included:

- 103 (1) provision requiring the licence holder⁴ to enter into an agreement for a purpose specified in the licence and provision for determining the terms of the agreement⁵;
- 104 (2) provision requiring the licence holder to comply with any requirements imposed at any time (by directions or otherwise) by a person with respect to any matter specified, or of a description specified, in the licence⁶;
- 105 (3) provision requiring the licence holder, except in so far as a person consents to its doing or not doing them, not to do or to do such things as may be specified, or of a description specified, in the licence⁷;
- 106 (4) provision requiring the licence holder to refer to a person for approval or determination such matters as may be specified, or of a description specified, in the licence⁸;
- 107 (5) provisions requiring a payment on its grant or payments during its currency (or both) (a) of an amount or amounts specified in the licence or determined by or under it; or (b) to a person or persons specified in the licence or determined by or under it⁹.

Such provisions as the licence authority thinks fit may be expressed as conditions¹⁰. No action lies in respect of a failure by a licence holder to perform a condition of a licence¹¹.

1 As to the meaning of 'licence' see PARA 139 note 4.

2 The licence authority is the Secretary of State or the Civil Aviation Authority ('CAA'), depending on the person to whom it falls to grant the licence: Transport Act 2000 s 7(7). As to the Secretary of State see PARA 33. As to the CAA see PARA 50 et seq.

3 Transport Act 2000 s 7(1). A provision relating to the modification of a licence has effect in addition to the provisions of Pt I Ch I (ss 1-40) regarding modification: s 7(5). 'Modification' includes addition, alteration and omission, and cognate expressions are to be construed accordingly: s 40(1)(h), (7).

Regulations made by the Secretary of State provide for regulating the conduct of the CAA and other persons, including the procedure to be followed by them, in connection with the performance by the CAA of its function under s 7(5) with respect to the modification of a licence, to the extent that it gives rise to a matter or question referred for determination by one or more members of the CAA: see the Civil Aviation Act 1982 s 7(2); and the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 31A(2) (added by SI 2001/2448). Where, pursuant to a condition of an air traffic services licence, any matter or question may be referred for determination by one or more members of the CAA pursuant to the Civil Aviation Authority Regulations 1991, SI 1991/1672, and such a matter or question is referred, it is to be determined in accordance with the provisions of Pt IIIA (regs 31A-31F) (added by SI 2001/2448). Provision is made for an appeal to the Secretary of State against a determination by the CAA: see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 31E (as so added).

4 As to the meaning of 'licence holder' see PARA 139 note 4.

5 Transport Act 2000 s 7(2)(a).

6 Transport Act 2000 s 7(2)(b). A reference in s 7(2) to a person is a reference to (1) a person specified, or of a description specified, in the licence for the purpose concerned; or (2) if the licence so provides, a person nominated for the purpose concerned by a person falling within head (1): s 7(3). Any of those persons may be the licence authority or some other person: s 7(3).

7 Transport Act 2000 s 7(2)(c).

8 Transport Act 2000 s 7(2)(d).

9 Transport Act 2000 s 7(4).

10 Transport Act 2000 s 7(6). A 'condition of a licence' is a provision of the licence which is expressed as a condition: s 40(1)(b), (6).

11 See the Transport Act 2000 s 10(1). However, this does not affect (1) a right of action in respect of an act or omission which takes place in the course of the provision of air traffic services; or (2) the power to make an order under s 20 (see PARA 151), a duty to comply with the order or a power to bring proceedings in respect of the duty: s 10(2). As to the meaning of 'air traffic services' see PARA 34 note 4.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(i) Requirement for a Licence/144. Duties of licence holders.

144. Duties of licence holders.

While a licence¹ is in force its holder² must secure that a safe system for the provision of authorised air traffic services³ in respect of a licensed area⁴ is provided, developed and maintained⁵. He must take all reasonable steps to secure that the system is also efficient and co-ordinated and that the demand for authorised air traffic services in respect of a licensed area is met⁶. Further, he must have regard, in providing, developing and maintaining the system, to the demands which are likely to be placed on it in the future⁷.

No action lies in respect of a failure by a licence holder to perform a duty so imposed⁸.

1 As to the meaning of 'licence' see PARA 139 note 4.

2 As to the meaning of 'licence holder' see PARA 139 note 4.

3 Authorised services are services of the description specified in the licence as the description of services which the holder of the licence is authorised to provide: Transport Act 2000 s 8(3). If a notice given by the Civil Aviation Authority ('CAA') to a licence holder so provides, such air traffic services as are specified in the notice are to be treated as not being authorised services for the purposes of s 8 in its application to that holder: s 9(1). Such a notice may specify the air traffic services by reference to part of a licensed area: s 9(2). It may be modified or revoked by a further notice given by the CAA to the holder concerned: s 9(3). As to the CAA see PARA 50 et seq. As to the meaning of 'air traffic services' see PARA 34 note 4. As to the meaning of 'modified' see PARA 143 note 3.

4 A licensed area is an area in respect of which the licence authorises its holder to provide air traffic services: Transport Act 2000 s 8(2).

5 Transport Act 2000 s 8(1)(a). For these purposes, a system for the provision of services is safe if, and only if, in providing the services the person who provides them complies with such requirements as are imposed by air navigation orders with regard to their provision: s 8(4). An air navigation order is an Order in Council under the Civil Aviation Act 1982 s 60 (see PARA 353): Transport Act 2000 s 8(5).

6 Transport Act 2000 s 8(1)(b), (c).

7 Transport Act 2000 s 8(1)(d).

8 See the Transport Act 2000 s 10(1). However, this does not affect (1) a right of action in respect of an act or omission which takes place in the course of the provision of air traffic services; or (2) the power to make an order under s 20 (see PARA 151), a duty to comply with the order or a power to bring proceedings in respect of the duty: s 10(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(ii) Modification of Licences/145. Modification by agreement.

(ii) Modification of Licences

145. Modification by agreement.

The Civil Aviation Authority ('CAA')¹ may modify the conditions of a licence² if its holder³ consents to the modifications⁴.

Before making such modifications, the CAA must publish a notice in such manner as it thinks appropriate for bringing it to the attention of persons likely to be affected by the making of the modifications⁵. The notice must state that the CAA proposes to make the modifications and state their effect and the reasons for so proposing, and state the period (being not less than 28 days starting with the date of publication of the notice) within which representations may be made regarding the proposed modifications⁶. Before making modifications, the CAA must serve a copy of the notice⁷ on the licence holder, send a copy of the notice to the Secretary of State, and consider any representations made in accordance with the notice⁸.

As soon as practicable after making modifications, the CAA must send a copy of them to the licence holder and to the Secretary of State⁹.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'licence' see PARA 139 note 4. As to the meaning of 'condition of a licence' see PARA 143 note 10.

3 As to the meaning of 'licence holder' see PARA 139 note 4.

4 Transport Act 2000 s 11(1). As to the meaning of 'modification' see PARA 143 note 3.

5 Transport Act 2000 s 11(2)(a).

6 Transport Act 2000 s 11(3). If within the period stated under s 11(3) the Secretary of State gives a direction to the CAA requiring it not to make the modifications, it must comply with the direction: s 11(4). As to directions see further PARA 38 note 2. As to the Secretary of State see PARA 33.

7 As to the service of documents see PARA 81 note 13.

8 Transport Act 2000 s 11(2)(b)-(d).

9 Transport Act 2000 s 11(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(ii) Modification of Licences/146. References to the Competition Commission.

146. References to the Competition Commission.

The Civil Aviation Authority ('CAA')¹ may make a reference to the Competition Commission² requiring the Commission to investigate and report on whether any matters which are specified in the reference and which relate to the provision of air traffic services³ by or on behalf of a licence holder⁴ operate against the public interest⁵ or may be expected to do so, and if so, whether the effects adverse to the public interest which the matters have or may be expected to have could be remedied or prevented by modifying the conditions of the licence⁶. The CAA may at any time by notice given to the Commission vary a reference by adding to the matters specified in it or by excluding from it one or more of those matters⁷. On receiving such notice the Commission must give effect to the variation⁸.

To help the Commission in its investigation, the CAA may specify in the reference or variation of it (1) any effects adverse to the public interest which in its opinion the matters specified in the reference or variation have or may be expected to have⁹; (2) any modifications of the conditions of the licence by which in its opinion those effects could be remedied or prevented¹⁰. As soon as practicable after making a reference or variation the CAA must serve a copy of the reference or variation¹¹ on the licence holder, publish particulars of the reference or variation in such manner as the CAA considers appropriate for bringing it to the attention of persons likely to be affected by it, and send a copy of the reference or variation to the Secretary of State¹².

To help the Commission in its investigation, the CAA must give to the Commission (a) any information the CAA has which relates to matters within the scope of the investigation and which the Commission requests¹³; (b) any information the CAA has which relates to matters within the scope of the investigation and which the CAA thinks it would be appropriate for it to give without a request¹⁴; and (c) any other help which the CAA is able to give in relation to matters within the scope of the investigation and which the Commission requests¹⁵. In carrying out the investigation concerned the Commission must take account of any information so given¹⁶.

1 As to the CAA see PARA 50 et seq.

2 As to the Competition Commission see **COMPETITION** vol 18 (2009) PARA 9 et seq.

3 As to the meaning of 'air traffic services' see PARA 34 note 4.

4 As to the meaning of 'licence' see PARA 139 note 4. As to the meaning of 'licence holder' see PARA 139 note 4.

5 In deciding for these purposes whether a matter operates, or may be expected to operate, against the public interest, the Commission must have regard to the matters as respects which duties are imposed on the Secretary of State and the CAA by the Transport Act 2000 ss 1, 2 (see PARAS 34, 52): s 12(8). As to the Secretary of State see PARA 33.

6 Transport Act 2000 s 12(1). As to the meaning of 'modifying' see PARA 143 note 3. As to the meaning of 'condition of a licence' see PARA 143 note 10. A reference under s 12 must specify a time limit (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made: s 12A(1) (s 12A added by the Enterprise Act 2002 s 278(1), Sch 25 para 44(1), (3)). A report of the Competition Commission on a reference under the Transport Act 2000 s 12 is not to have effect (and no action may be taken in relation to it under s 4) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the CAA under s 12A(3): s 12A(2) (as so added). The CAA may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that

period by no more than six months: s 12A(3) (as so added). However, no more than one such extension is possible in relation to the same reference: s 12A(4) (as so added). The CAA must, in the case of such an extension made by it (1) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and (2) send a copy of what has been so published by it to the licence holder and the Secretary of State: s 12A(5) (as so added).

Certain provisions of the Enterprise Act 2002 Pt 3 (ss 22-130) are applied, with modifications, for the purposes of references under the Transport Act 2000 s 12, namely the Enterprise Act 2002 s 109 (attendance of witnesses and production of documents etc); s 110 (enforcement of powers under s 109: general); s 111 (penalties); s 112 (penalties: main procedural requirements); s 113 (payments and interest by instalments); s 114 (appeals in relation to penalties); s 115 (recovery of penalties); and s 116 (statement of policy): see the Transport Act 2000 s 12B (added by the Enterprise Act 2002 s 278(1), Sch 25 para 44(3); and amended by the Communications Act 2003 s 389(1), Sch 16 para 7(1), (2)). See **COMPETITION** vol 18 (2009) PARA 1 et seq.

7 Transport Act 2000 s 12(2).

8 Transport Act 2000 s 12(2).

9 Transport Act 2000 s 12(3)(a).

10 Transport Act 2000 s 12(3)(b).

11 As to the service of documents see PARA 81 note 13.

12 Transport Act 2000 s 12(4). If, before the end of the period of 28 days starting with the day on which the Secretary of State receives the copy, he gives a direction to the Commission requiring it not to proceed with the reference or not to give effect to the variation, the Commission must comply with the direction: s 12(5). As to directions see further PARA 38 note 2.

13 Transport Act 2000 s 12(6)(a).

14 Transport Act 2000 s 12(6)(b).

15 Transport Act 2000 s 12(6)(c).

16 Transport Act 2000 s 12(7).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(ii) Modification of Licences/147. Reports on references.

147. Reports on references.

In making a report on a reference¹, the Competition Commission² must include definite conclusions on the questions contained in the reference and such an account of its reasons for the conclusions as in its opinion facilitates a proper understanding of the questions and of the conclusions³. If it concludes that any of the matters specified in the reference operate against the public interest or may be expected to do so, it must specify the effects adverse to the public interest which the matters have or may be expected to have⁴, and if it concludes that any adverse effects so specified could be remedied or prevented by modifications⁵ of the conditions of the licence⁶, it must specify modifications by which the effects could be remedied or prevented⁷.

A report of the Commission on such a reference must be made to the Civil Aviation Authority ('CAA')⁸. The CAA must on receiving such a report send a copy to the licence holder⁹ and to the Secretary of State¹⁰, and must, after the end of the specified period¹¹, publish the report in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by it¹². However, if the Secretary of State thinks that the publication of any matter would be against the public interest or any person's commercial interests, he may before the end of the specified period give a direction to the CAA requiring it to exclude the matter from every copy of the report to be published as mentioned above¹³.

For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under these provisions¹⁴. In making any report on such a reference the Competition Commission must have regard to the following considerations before disclosing any information¹⁵: (1) the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest; (2) the need to exclude from disclosure (so far as practicable) (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests; (3) the extent to which the disclosure of the information mentioned in head (2)(a) or (b) is necessary for the purposes of the report¹⁶.

1 le under the Transport Act 2000 s 12: see PARA 146.

2 As to the Competition Commission see **COMPETITION** vol 18 (2009) PARA 9 et seq.

3 Transport Act 2000 s 13(1)(a). For the purposes of ss 14-17 (see PARAS 148-149) a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of the Competition Act 1998 Sch 7 para 15: Transport Act 2000 s 13(1A) (added by the Enterprise Act 2002 s 278(1), Sch 25 para 44(1), (4)(a)). If a member of a group so constituted disagrees with any conclusions contained in a report made on such a reference as the conclusions of the Competition Commission, the report must, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing: Transport Act 2000 s 13(1B) (added by the Enterprise Act 2002 Sch 25 para 44(4)(a)).

4 Transport Act 2000 s 13(1)(b).

5 As to the meaning of 'modification' see PARA 143 note 3.

6 As to the meaning of 'licence' see PARA 139 note 4. As to the meaning of 'condition of a licence' see PARA 143 note 10.

- 7 Transport Act 2000 s 13(1)(c).
- 8 Transport Act 2000 s 13(3). As to the CAA see PARA 50 et seq.
- 9 As to the meaning of 'licence holder' see PARA 139 note 4.
- 10 As to the Secretary of State see PARA 33.
- 11 The specified period is the period of 14 days starting with the day after the Secretary of State receives the copy: Transport Act 2000 s 13(6).
- 12 Transport Act 2000 s 13(4).
- 13 Transport Act 2000 s 13(5). As to directions see further PARA 38 note 2.
- 14 Transport Act 2000 s 13(2) (substituted by the Enterprise Act 2002 Sch 25 para 44(4)(b)). As to the law relating to defamation see **LIBEL AND SLANDER**.
- 15 Transport Act 2000 s 13(2A) (added by the Enterprise Act 2002 Sch 25 para 44(4)(b)).
- 16 Transport Act 2000 s 13(2B)-(2D) (added by the Enterprise Act 2002 Sch 25 para 44(4)(b)).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(ii) Modification of Licences/148. Modification following report.

148. Modification following report.

Where a report of the Competition Commission¹ on a reference²:

- 108 (1) includes conclusions to the effect that any of the matters specified in the reference operate against the public interest or may be expected to do so³;
- 109 (2) specifies effects adverse to the public interest which the matters have or may be expected to have⁴;
- 110 (3) includes conclusions to the effect that the effects could be remedied or prevented by modifications⁵ of the conditions of the licence⁶; and
- 111 (4) specifies modifications by which the effects could be remedied or prevented⁷,

the Civil Aviation Authority ('CAA')⁸ must suggest such modifications of the conditions of the licence as it thinks are needed to remedy or prevent the adverse effects specified in the report⁹.

Before suggesting modifications, the CAA must have regard to the modifications specified in the report and publish a notice in such manner as it thinks appropriate for bringing the matters to which it relates to the attention of persons likely to be affected by the making of the modifications¹⁰. The notice must state that the CAA proposes to suggest the modifications and state their effect and the reasons for so proposing, and state the period (being not less than 28 days starting with the date of publication of the notice) within which representations may be made regarding the proposals¹¹. Before suggesting modifications, the CAA must serve a copy of the notice on the licence holder¹², and consider any representations made in accordance with the notice and not withdrawn¹³.

If the CAA suggests modifications, it must give notice to the Commission setting out the modifications it suggests and the reasons for its suggestions, and send to the Commission copies of any representations made in accordance with the notice published and not withdrawn¹⁴.

1 As to the Competition Commission see **COMPETITION** vol 18 (2009) PARA 9 et seq.

2 Ie under the Transport Act 2000 s 12: see PARA 146.

3 Transport Act 2000 s 14(1)(a).

4 Transport Act 2000 s 14(1)(b).

5 As to the meaning of 'modification' see PARA 143 note 3.

6 Transport Act 2000 s 14(1)(c). As to the meaning of 'licence' see PARA 139 note 4. As to the meaning of 'condition of a licence' see PARA 143 note 10.

7 Transport Act 2000 s 14(1)(d).

8 As to the CAA see PARA 50 et seq.

9 Transport Act 2000 s 14(2).

10 Transport Act 2000 s 14(3)(a), (b).

11 Transport Act 2000 s 14(4).

12 As to the meaning of 'licence holder' see PARA 139 note 4. As to the service of documents see PARA 81 note 13.

13 Transport Act 2000 s 14(3).

14 Transport Act 2000 s 14(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(ii) Modification of Licences/149. The Competition Commission's power to give direction.

149. The Competition Commission's power to give direction.

If the Competition Commission¹ is given notice setting out the modifications of conditions of a licence suggested by the Civil Aviation Authority ('CAA')², then the Commission may give a direction³ to the CAA not to make the modifications set out in the notice, or not to make such of those modifications as are specified in the direction⁴. However, the Commission may give a direction only if it thinks the modifications set out in the notice are not the modifications which are needed to remedy or prevent the adverse effects specified in the Commission's report⁵ on the reference⁶.

If the Commission gives a direction it must publish a notice in such manner as the Commission thinks appropriate for bringing the matters to which it relates to the attention of persons likely to be affected by the direction⁷. The notice must set out the modifications set out in the notice⁸, the direction, and the reasons for giving the direction⁹. The Commission must serve a copy of the notice on the licence holder¹⁰. As soon as practicable after making such modifications, the CAA must send a copy of them to the licence holder and to the Secretary of State¹¹.

If the Commission gives a direction not to make the modifications set out in the notice, the Commission must itself make such modifications of the conditions of the licence as it thinks are needed to remedy or prevent the adverse effects specified in the Commission's report¹² on the reference¹³. If the direction is not to make such of those modifications as are specified in the direction, the Commission must itself make such modifications of the conditions of the licence as it thinks are needed to remedy or prevent such of the adverse effects as (1) are specified in the Commission's report on the reference; and (2) would not be remedied or prevented by the modifications set out in the notice¹⁴ and not specified in the Commission's direction¹⁵. Before making such modifications, the Commission must publish a notice in such manner as it thinks appropriate for bringing the matters to which it relates to the attention of persons likely to be affected by the making of the modifications¹⁶. The notice must state that the Commission proposes to make the modifications and state their effect and the reasons for so proposing, and state the period (being not less than 28 days starting with the date of publication of the notice) within which representations may be made regarding the proposed modifications¹⁷. Before making such modifications, the Commission must serve a copy of the notice on the licence holder and a copy on the CAA, and consider any representations made in accordance with the notice and not withdrawn¹⁸. As soon as practicable after making modifications, the Commission must publish a notice in such manner as it thinks appropriate for bringing the matters to which it relates to the attention of persons likely to be affected by the modifications¹⁹. The notice must state that the modifications have been made, set them out, and set out the reasons for making them²⁰. The Commission must serve a copy of the notice on the licence holder, the Secretary of State and the CAA²¹.

The Commission must exercise its functions in relation to modifications²² so as to maintain a high standard of safety in the provision of air traffic services²³. The Commission must also exercise such functions in the manner it thinks best calculated:

- 112 (a) to further the interests of operators and owners of aircraft, owners and managers of aerodromes²⁴, persons travelling in aircraft, and persons with rights in property carried in them²⁵;
- 113 (b) to promote efficiency and economy on the part of licence holders²⁶;

- 114 (c) to secure that licence holders will not find it unduly difficult to finance activities authorised by their licences²⁷;
- 115 (d) to take account of any international obligations of the United Kingdom²⁸ notified to the CAA by the Secretary of State (whatever the time or purpose of the notification) and notified to the Commission by the CAA²⁹;
- 116 (e) to take account of any guidance on environmental objectives given to the CAA by the Secretary of State after 1 February 2001³⁰ and notified to the Commission by the CAA³¹.

The Commission must exercise its functions so as to impose on licence holders the minimum restrictions which are consistent with the exercise of those functions³².

1 As to the Competition Commission see **COMPETITION** vol 18 (2009) PARA 9 et seq.

2 I.e. notice given under the Transport Act 2000 s 14: see PARA 148. As to the meaning of 'modification' see PARA 143 note 3. As to the meaning of 'licence' see PARA 139 note 4. As to the meaning of 'condition of a licence' see PARA 143 note 10. As to the CAA see PARA 50 et seq.

3 I.e. within the permitted period, which is the period of four weeks starting with the day the Commission is given notice under the Transport Act 2000 s 14 (see PARA 148): s 15(9). If within that period the Commission applies to the Secretary of State to extend it to six weeks, and he directs that it is to be so extended, the permitted period is the period of six weeks starting with the day the Commission is given notice under s 14: s 15(10). As to the Secretary of State see PARA 33.

4 Transport Act 2000 s 15(1), (2). If the permitted period (see note 3) expires without a direction being given under s 15(2), the CAA must make the modifications set out in the notice given under s 14 (see PARA 148): s 15(6). If within the permitted period a direction is given not to make such modifications as are specified in the direction, the CAA must make the modifications which are set out in the notice given under s 14, and which are not specified in the direction: s 15(7). As to directions see further PARA 38 note 2.

Certain provisions of the Enterprise Act 2002 Pt 3 (ss 22-130), namely ss 109-116, are applied with modifications in relation to the exercise by the Commission of its functions under the Transport Act 2000 s 15 or s 16: see s 18(6)-(11) (s 18 substituted by the Enterprise Act 2002 s 278(1), Sch 25 para 44(1), (5); the Transport Act 2000 s 18(9) amended by the Communications Act 2003, s 389(1), Sch 16, PARA 7(1), (3)). See **COMPETITION** vol 18 (2009) PARA 1 et seq.

5 I.e. the Commission's report on the reference under the Transport Act 2000 s 12: see PARA 146.

6 Transport Act 2000 s 15(3).

7 Transport Act 2000 s 15(4)(a). For the purposes of the law relating to defamation, absolute privilege attaches to any notice under s 15(4) or under s 16(4) or (6) (see the text to notes 16, 19): s 18(1) (s 18 as substituted: see note 4). In publishing or serving any such notice, the Competition Commission must have regard to the following considerations before disclosing any information (s 18(2) (as so substituted)): (1) the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest (s 18(3) (as so substituted)); (2) the need to exclude from disclosure (so far as practicable) (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests (s 18(4) (as so substituted)); (3) the extent to which the disclosure of the information mentioned in head (2)(a) or (b) is necessary for the purposes of the notice (s 18(5) (as so substituted)). As to the law relating to defamation see **LIBEL AND SLANDER**.

8 I.e. given under the Transport Act 2000 s 14: see PARA 148.

9 Transport Act 2000 s 15(5).

10 Transport Act 2000 s 15(4)(b). As to the meaning of 'licence holder' see PARA 139 note 4. As to the service of documents see PARA 81 note 13.

11 Transport Act 2000 s 15(8).

12 I.e. a reference under the Transport Act 2000 s 12: see PARA 146.

- 13 Transport Act 2000 ss 15(2)(a), 16(1), (2).
- 14 Ie under the Transport Act 2000 s 14: see PARA 148.
- 15 Transport Act 2000 ss 15(2)(b), 16(1), (3).
- 16 Transport Act 2000 s 16(4)(a). As to disclosure of information in such a notice see note 7.
- 17 Transport Act 2000 s 16(5).
- 18 Transport Act 2000 s 16(4)(b), (c).
- 19 Transport Act 2000 s 16(6)(a). As to disclosure of information in such a notice see note 7.
- 20 Transport Act 2000 s 16(7).
- 21 Transport Act 2000 s 16(6)(b).
- 22 Ie under the Transport Act 2000 s 16(2), (3): see the text and notes 12-15.
- 23 Transport Act 2000 s 17(1). This duty overrides those in s 17(2)-(5) (see the text and notes 24-31): see s 17(1). As to the meaning of 'air traffic services' see PARA 34 note 4.
- 24 As to the meaning of 'aerodrome' see PARA 175; definition applied by the Transport Act 2000 s 40(1)(a), (2). As to the meaning of 'manager of an aerodrome' see PARA 34 note 5.
- 25 Transport Act 2000 s 17(2)(a). The only interests to be considered under s 17(2)(a) are interests regarding the range, availability, continuity, cost and quality of air traffic services: s 17(3). The reference in s 17(2)(a) to furthering interests includes a reference to furthering them (where the Commission thinks it appropriate) by promoting competition in the provision of air traffic service: s 17(4). If in a particular case there is a conflict in the application of the provisions of s 17(2)-(4), in relation to that case the Commission must apply them in the manner it thinks is reasonable having regard to them as a whole: s 17(5).
- 26 Transport Act 2000 s 17(2)(b).
- 27 Transport Act 2000 s 17(2)(c).
- 28 As to the meaning of 'United Kingdom' see PARA 30 note 1.
- 29 Transport Act 2000 s 17(2)(d).
- 30 Ie the coming into force of the Transport Act 2000 s 17: see the Transport Act 2000 (Commencement No 3) Order 2001, SI 2001/57, art 3(1), Sch 2 Pt I.
- 31 Transport Act 2000 s 17(2)(e).
- 32 Transport Act 2000 s 17(6).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(ii) Modification of Licences/150. Modification by order under other enactments.

150. Modification by order under other enactments.

The Secretary of State¹ has power to modify the conditions of a licence² when he is, by order, exercising certain powers under the Enterprise Act 2002 relating to monopolies and mergers³.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'modify' see PARA 143 note 3. As to the meaning of 'licence' see PARA 139 note 4. As to the meaning of 'condition of a licence' see PARA 143 note 10.

3 See the Transport Act 2000 s 19 (amended by the Enterprise Act 2002 ss 86(5), 164(2), Sch 9 para 15(1), (2); and modified by SI 2003/1592). As to the Enterprise Act 2002 see **COMPETITION** vol 18 (2009) PARA 1 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(iii) Enforcement/151. Orders for securing compliance.

(iii) Enforcement

151. Orders for securing compliance.

If the Civil Aviation Authority ('CAA')¹ is satisfied that a licence holder² is contravening or is likely to contravene one of his duties³ or licence conditions⁴ it must make a final order containing provision it thinks is needed to secure compliance with the duty or condition⁵.

If the CAA is not so satisfied but it appears to it that a licence holder is contravening or is likely to contravene such a duty or a licence condition and that a provisional order is needed, it must make a provisional order containing provision it thinks is needed to secure compliance with the duty or condition⁶. In deciding whether a provisional order is needed, the CAA must have regard in particular to (1) the extent to which any person is likely to sustain loss or damage as a result of anything likely to be done or omitted in contravention of the duty or licence condition unless a provisional order is made⁷; and (2) the fact that there are limited remedies⁸ for a contravention of that duty or licence condition, unless there is an act or omission which takes place in the course of the provision of air traffic services⁹. The CAA must confirm a provisional order, with or without modifications¹⁰, if (a) it is satisfied that the licence holder is contravening or is likely to contravene a duty or a licence condition¹¹; and (b) it thinks its confirmation (with any modifications) is needed to secure compliance with the duty or condition¹².

However, the CAA must not make a final order or make or confirm a provisional order if it is satisfied that the general duty imposed on it¹³ precludes it from doing so, or that the most appropriate way of proceeding is under the Competition Act 1998¹⁴. If the CAA is satisfied that:

- 117 (i) the licence holder has agreed to take and is taking all the steps the CAA thinks appropriate to secure or facilitate compliance with the duty or condition concerned¹⁵;
- 118 (ii) the contraventions or apprehended contraventions are trivial¹⁶;
- 119 (iii) the contraventions or apprehended contraventions will not adversely affect the interests of operators and owners of aircraft, owners and managers of aerodromes¹⁷, persons travelling in aircraft, and persons with rights in property carried in them¹⁸;
- 120 (iv) the Secretary of State has made an application¹⁹ for an air traffic administration order in relation to the licence holder²⁰,

it must not make a final order or make or confirm a provisional order unless it believes that it is appropriate to do so²¹.

A final or provisional order must require the licence holder to do or not to do specified things or things of a specified description²². It takes effect at a time determined by or under the order, must secure that that time is the earliest practicable time, and may be revoked at any time by the CAA²³. A final order continues to have effect until such time, if any, as the CAA revokes it, and a provisional order ceases to have effect at the termination time²⁴. However, if the CAA confirms a provisional order before the termination time it continues to have effect until such time, if any, as the CAA revokes it²⁵.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'licence holder' see PARA 139 note 4.

3 le duties under the Transport Act 2000 s 8: see PARA 144.

4 As to the meaning of 'licence' see PARA 139 note 4. As to the meaning of 'condition of a licence' see PARA 143 note 10. In relation to a licence holder, a licence condition is a condition of the licence concerned: Transport Act 2000 s 20(10)(b).

5 Transport Act 2000 s 20(1), (10)(a). Section 20 has effect subject to s 21 (exceptions: see the text and notes 13-21): s 20(12).

6 Transport Act 2000 s 20(2).

7 Transport Act 2000 s 20(3)(a).

8 le the only remedy for a contravention of a duty or licence condition is under the Transport Act 2000 ss 20, 24 (see PARA 154).

9 Transport Act 2000 s 20(3)(b). As to the meaning of 'air traffic services' see PARA 34 note 4.

10 As to the meaning of 'modifications' see PARA 143 note 3.

11 Transport Act 2000 s 20(9)(a).

12 Transport Act 2000 s 20(9)(b).

13 le by the Transport Act 2000 s 2: see PARA 52.

14 Transport Act 2000 s 21(1). As to the Competition Act 1998 see **COMPETITION** vol 18 (2009) PARA 1 et seq.

15 Transport Act 2000 s 21(3)(a).

16 Transport Act 2000 s 21(3)(b).

17 As to the meaning of 'aerodrome' see PARA 175; definition applied by the Transport Act 2000 s 40(1)(a), (2). As to the meaning of 'manager of an aerodrome' see PARA 34 note 5.

18 Transport Act 2000 s 21(3)(c), (4). The only interests to be considered under s 21(3)(c) are interests regarding safety and interests regarding the range, availability, continuity, cost and quality of air traffic services: s 21(5). As to the meaning of 'air traffic services' see PARA 34 note 4.

19 le under the Transport Act 2000 s 28: see PARA 158. As to the Secretary of State see PARA 33.

20 Transport Act 2000 s 21(3)(d).

21 Transport Act 2000 s 21(2).

22 Transport Act 2000 s 20(4).

23 Transport Act 2000 s 20(5).

24 Transport Act 2000 s 20(6), (7). The termination time is the earlier of (1) the end of the period (not exceeding three months) which is determined by or under the order and which starts when it takes effect; or (2) such time, if any, as the CAA revokes it: s 20(7).

25 Transport Act 2000 s 20(8).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(iii) Enforcement/152. Procedural requirements.

152. Procedural requirements.

The Civil Aviation Authority ('CAA')¹ must, before making a final order or confirming a provisional order², publish a notice in such manner as it thinks appropriate for bringing the matters to which the notice relates to the attention of persons likely to be affected by them³. The notice must:

- 121 (1) state that the CAA proposes to make or confirm the order and state its effect⁴;
- 122 (2) state the duty⁵ or licence condition⁶ with which the order is intended to secure compliance, the acts or omissions which the CAA thinks constitute, or would constitute, contraventions of the duty or condition, and any other facts which it thinks justify the making or confirmation of the order⁷; and
- 123 (3) state the period, being not less than 21 days starting with the date of publication of the notice, within which representations may be made regarding the proposed order or confirmation⁸.

Before making a final order or confirming a provisional order, the CAA must serve on the licence holder⁹ a copy of the notice and a copy of the order proposed (or proposed to be confirmed), and consider any representations made in accordance with the notice (and not withdrawn)¹⁰.

The CAA must not make a final order with modifications¹¹, or confirm a provisional order with modifications, unless:

- 124 (a) the licence holder consents to the modifications¹²; or
- 125 (b) the CAA (i) serves on the licence holder a notice of the proposal to make or confirm the order with modifications; (ii) states in the notice the period, being not less than seven days starting with the date of the service of the notice, within which representations may be made regarding the proposed modifications; and (iii) considers any representations made in accordance with the notice (and not withdrawn)¹³.

As soon as practicable after making a final order or making or confirming a provisional order the CAA must serve a copy of the order on the licence holder and on the Secretary of State¹⁴, and publish the order in such manner as the CAA thinks appropriate for bringing it to the attention of persons likely to be affected by it¹⁵.

Before revoking a final order or a provisional order which has been confirmed, the CAA must publish a notice in such manner as it thinks appropriate for bringing the revocation to the attention of persons likely to be affected by it¹⁶. The notice must state that the CAA proposes to revoke the order and state its effect, and state the period, being not less than 21 days starting with the date of publication of the notice, within which representations may be made regarding the proposed revocation¹⁷. The CAA must serve a copy of the notice on the licence holder, and consider any representations made in accordance with the notice (and not withdrawn)¹⁸.

If the CAA:

- 126 (A) is satisfied that the general duty imposed on it¹⁹ precludes it from making a final order or making or confirming a provisional order, or that the most appropriate way of proceeding is under the Competition Act 1998²⁰; or
- 127 (B) is satisfied that certain conditions apply²¹ and it does not believe that it is appropriate to make a final order or make or confirm a provisional order,

it must serve a notice to that effect on the licence holder, and publish the notice in such manner as it thinks appropriate for bringing the matters to which the notice relates to the attention of persons likely to be affected by them²².

1 As to the CAA see PARA 50 et seq.

2 Ie an order for securing compliance: see PARA 151.

3 Transport Act 2000 s 22(1).

4 Transport Act 2000 s 22(2)(a).

5 Ie a duty imposed on the holder by the Transport Act 2000 s 8 (see PARA 144): s 20(10)(a), (11).

6 As to the meaning of 'licence' see PARA 139 note 4. As to the meaning of 'condition of a licence' see PARA 143 note 10. In relation to a licence holder a licence condition is a condition of the licence concerned: Transport Act 2000 s 20(10)(b), (11).

7 Transport Act 2000 s 22(2)(b).

8 Transport Act 2000 s 22(2)(c).

9 As to the meaning of 'licence holder' see PARA 139 note 4. As to the service of documents see PARA 81 note 13.

10 Transport Act 2000 s 22(1)(b), (c).

11 As to the meaning of 'modifications' see PARA 143 note 3.

12 Transport Act 2000 s 22(3)(a).

13 Transport Act 2000 s 22(3)(b), (4). If the modifications are trivial the CAA must be treated as complying with these requirements if it serves on the licence holder a notice of the proposal to make or confirm the order with modifications: s 22(5).

14 As to the Secretary of State see PARA 33.

15 Transport Act 2000 s 22(6).

16 Transport Act 2000 s 22(7)(a). If after acting under s 22(7) the CAA decides not to revoke the order, it must publish a notice of its decision in such manner as it thinks appropriate for bringing the decision to the attention of persons likely to be affected by it, and serve a copy of the notice on the licence holder: s 22(9).

17 Transport Act 2000 s 22(8).

18 Transport Act 2000 s 22(7)(b), (c). See also note 16.

19 Ie by the Transport Act 2000 s 2: see PARA 52.

20 Ie if the CAA is satisfied as mentioned in the Transport Act 2000 s 21(1): see PARA 151. As to the Competition Act 1998 see **COMPETITION** vol 18 (2009) PARA 1 et seq.

21 Ie if the CAA is satisfied as mentioned in the Transport Act 2000 s 21(2): see PARA 151.

22 Transport Act 2000 s 22(10), (11).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(iii) Enforcement/153. Validity of orders.

153. Validity of orders.

If a licence holder¹ to which a final or provisional order² relates is aggrieved by the order and wants to question its validity on the ground that (1) its making or confirmation was not within the powers conferred³ on the CAA⁴; or (2) certain procedural requirements⁵ have not been complied with⁶, the licence holder may apply to the High Court⁷. If a copy of the order as made or confirmed was served on the licence holder, the application to the court must be made within the period of 42 days starting with the day the copy was served on it⁸.

On an application, the court may quash the order or any provision of it if satisfied that the making or confirmation of the order was not within the conferred powers⁹, or that the interests of the licence holder have been substantially prejudiced by a failure to comply with the procedural requirements¹⁰.

Except as mentioned above, the validity of a final or provisional order may not be questioned in any legal proceedings¹¹.

1 As to the meaning of 'licence holder' see PARA 139 note 4.

2 Ie an order for securing compliance: see PARA 151.

3 Ie the powers conferred by the Transport Act 2000 ss 20, 21: see PARA 151.

4 Transport Act 2000 s 23(1)(a).

5 Ie the requirements under the Transport Act 2000 s 22(1)-(6): see PARA 152.

6 Transport Act 2000 s 23(1)(b).

7 Transport Act 2000 s 23(2), (6).

8 Transport Act 2000 s 23(3). As to the service of documents see PARA 81 note 13.

9 See note 3.

10 Transport Act 2000 s 23(4). The reference in the text to procedural requirements is a reference to the requirements under s 22(1)-(6) (see PARA 152): s 23(4).

11 Transport Act 2000 s 23(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(iii) Enforcement/154. Effect of orders.

154. Effect of orders.

The licence holder¹ to which a final or provisional order² relates has a duty to comply with it³, and the duty is owed to any person who may be affected by a contravention of the order⁴. A breach of the duty which causes such a person to sustain loss or damage is actionable by him⁵, but in proceedings brought against a licence holder, it is a defence for the licence holder to prove that it took all reasonable steps and exercised all due diligence to avoid contravening the order⁶. Compliance with a final or provisional order is also enforceable by civil proceedings brought by the Civil Aviation Authority ('CAA')⁷ for an injunction⁸ or for any other appropriate relief or remedy⁹.

1 As to the meaning of 'licence holder' see PARA 139 note 4.

2 Ie an order for securing compliance: see PARA 151.

3 Transport Act 2000 s 24(1).

4 Transport Act 2000 s 24(2).

5 Transport Act 2000 s 24(3).

6 Transport Act 2000 s 24(4).

7 As to the CAA see PARA 50 et seq.

8 As to injunctions see **CIVIL PROCEDURE** vol 11 (2009) PARA 331 et seq .

9 Transport Act 2000 s 24(5). However, this does not prejudice a right a person may have by virtue of s 24(3) (see the text and note 5) to bring civil proceedings for contravention or apprehended contravention of a final or provisional order: s 24(6).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(iii) Enforcement/155. Power to obtain information.

155. Power to obtain information.

If it appears to the Civil Aviation Authority ('CAA')¹ that a licence holder² may have contravened or may be contravening or is likely to contravene a duty³ or a licence condition⁴, it may, for any purpose connected with such of the CAA's functions⁵ as are exercisable in relation to the matter, serve⁶ on any person a notice which (1) requires the person to produce any documents⁷ which are specified or described in the notice and are in his custody or under his control, and to produce them at a time and place so specified and to a person so specified⁸; or (2) requires the person to supply information specified or described in the notice, and to supply it at a time and place and in a form and manner so specified and to a person so specified⁹. However, no person may be required to produce documents which he could not be compelled to produce in civil proceedings in the court¹⁰, or to supply information which he could not be compelled to supply in such proceedings¹¹.

If a person without reasonable excuse fails to do anything required of him under such a notice, he is guilty of an offence¹². If a person intentionally alters, suppresses¹³ or destroys a document which he has been required to produce, he is guilty of an offence¹⁴. If a person makes default in complying with a notice, the court may on the CAA's application make such order as the court thinks fit for requiring the default to be made good¹⁵.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'licence holder' see PARA 139 note 4.

3 I.e. a duty imposed on the holder by the Transport Act 2000 s 8 (see PARA 144): s 20(10)(a), (11).

4 As to the meaning of 'licence' see PARA 139 note 4. As to the meaning of 'condition of a licence' see PARA 143 note 10. In relation to a licence holder, a licence condition is a condition of the licence concerned: Transport Act 2000 s 20(10)(b), (11).

5 I.e. under the Transport Act 2000 ss 20, 21: see PARA 151.

6 As to the service of documents see PARA 81 note 13.

7 A reference to producing a document includes a reference to producing a legible and intelligible copy of information recorded otherwise than in legible form: Transport Act 2000 s 25(9).

8 Transport Act 2000 s 25(1), (2)(a).

9 Transport Act 2000 s 25(1), (2)(b). Such a requirement may be made only if the person is carrying on a business: s 25(3).

10 For these purposes, a reference to the court is a reference to the High Court: Transport Act 2000 s 25(11).

11 Transport Act 2000 s 25(4).

12 Transport Act 2000 s 25(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 25(5). As to the standard scale see PARA 50 note 8.

13 A reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form: Transport Act 2000 s 25(10).

14 Transport Act 2000 s 25(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: s 25(6). As to the statutory maximum see PARA 43 note 12.

15 Transport Act 2000 s 25(7). Such an order may provide that all the costs or expenses of and incidental to the application are to be borne by the person in default, or, if officers of a company or other association are responsible for its default, by those officers: s 25(8).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(iii) Enforcement/156. Investigative powers of the Civil Aviation Authority.

156. Investigative powers of the Civil Aviation Authority.

The Civil Aviation Authority ('CAA')¹ must investigate any alleged or apprehended contravention of a licence holder's duty² or of a licence condition³ if the alleged or apprehended contravention is the subject of a representation⁴ made to the CAA by or on behalf of a person who appears to it to have an interest in the matter⁵.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'licence', and as to the meaning of 'licence holder', see PARA 139 note 4. The reference in the text to a licence holder's duty is a reference to a duty imposed on a licence holder under the Transport Act 2000 s 8 (see PARA 144): ss 20(10)(a), 34(3).

3 As to the meaning of 'condition of a licence' see PARA 143 note 10. In relation to a licence holder, a licence condition is a condition of the licence concerned: Transport Act 2000 s 20(10)(b).

4 No duty to investigate arises from a representation which appears to the CAA to be frivolous or vexatious: Transport Act 2000 s 34(2).

5 Transport Act 2000 s 34(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(iv) Financial Protection and Administration Orders/157. Protection of licence companies etc.

(iv) Financial Protection and Administration Orders

157. Protection of licence companies etc.

No licence company¹ may be wound up voluntarily², and no application for the winding up of a licence company may be made by a person other than the Secretary of State³ unless the person has given to the Secretary of State and the Civil Aviation Authority ('CAA')⁴ at least 14 days' notice of his intention to make the application⁵. No application may be made to a court for an administration order⁶ in relation to a licence company: anything purporting to be such an application is of no effect and no administration order may be made⁷ in relation to a licence company⁸. No step may be taken by a person to enforce any security⁹ over the property¹⁰ of a licence company unless the person has given to the Secretary of State and the CAA at least 14 days' notice of his intention to take the step¹¹.

1 References to a licence company are references to a company which holds a licence: Transport Act 2000 s 26(6)(a). As to the meaning of 'licence' see PARA 139 note 4.

2 Transport Act 2000 s 26(1). As to voluntary winding up see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 939 et seq.

3 As to the Secretary of State see PARA 33.

4 As to the CAA see PARA 50 et seq.

5 Transport Act 2000 s 26(4).

6 Ie under the Insolvency Act 1986 Pt II (ss 8-27): see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 146 et seq.

7 Ie under the Insolvency Act 1986 Pt II.

8 Transport Act 2000 s 26(2).

9 'Security' means any mortgage, charge, lien or other security: see the Insolvency Act 1986 s 248(b); and the Transport Act 2000 s 26(5).

10 'Property' includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property: see the Insolvency Act 1986 s 436; and the Transport Act 2000 s 26(5).

11 Transport Act 2000 s 26(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(iv) Financial Protection and Administration Orders/158. Air traffic administration orders.

158. Air traffic administration orders.

If an application is made to any court¹ for the winding up of a licence company², the Secretary of State³ and the Civil Aviation Authority ('CAA')⁴ are entitled to be heard by the court⁵. The court must not make a winding up order or appoint a provisional liquidator⁶, but if the court is satisfied that it would be appropriate to make a winding up order if the company were not a licence company, it must instead make an air traffic administration order⁷. An air traffic administration order⁸ is an order directing that in the period while the order is in force the company's affairs, business⁹ and property¹⁰ are to be managed by a person appointed by the court¹¹:

- 128 (1) for the achievement of (a) the transfer to another company, as a going concern, of so much of the licence company's undertaking as it is necessary to transfer to ensure that its licensed activities¹² may be properly carried out; or (b) the transfer to different companies of different parts of the licence company's undertaking, as going concerns, where the parts together constitute so much of its undertaking as is necessary to transfer to ensure that its licensed activities may be properly carried out¹³;
- 129 (2) for the achievement of the carrying on, pending the transfer, of the licence company's licensed activities¹⁴; and
- 130 (3) in a manner which protects the interests of the company's members and creditors¹⁵.

The court may make such an order in relation to a licence company if an application by petition¹⁶ is made by the Secretary of State or by the CAA with his consent, and the court is satisfied that one or more of the following four conditions is satisfied¹⁷:

- 131 (i) the company is or is likely to be unable to pay its debts¹⁸;
- 132 (ii) the Secretary of State certifies that, but for these provisions, it would be appropriate for him to petition for the company's winding up following a report made by inspectors¹⁹, and it would be just and equitable for the company to be wound up²⁰;
- 133 (iii) there has been or is or is likely to be a contravention by the company of its duty as a licence holder²¹, no notice has been served²² in relation to the contravention or apprehended contravention, and the contravention or apprehended contravention is serious enough to make it inappropriate for the company to continue to hold the licence concerned²³;
- 134 (iv) a final or provisional order²⁴ has been made or confirmed in relation to a duty²⁵ or a licence condition²⁶, the order is not the subject of proceedings²⁷, and there has been or is or is likely to be such a contravention of the order by the company as to make it inappropriate for it to continue to hold the licence concerned²⁸.

1 For these purposes, a reference to the court is a reference to the court which (but for the Transport Act 2000 s 27) would have jurisdiction to wind up the company: ss 27(6), 28(8).

2 As to the meaning of 'licence company' see PARA 157 note 1.

3 As to the Secretary of State see PARA 33.

4 As to the CAA see PARA 50 et seq.

5 Transport Act 2000 s 27(1), (2).

6 Transport Act 2000 s 27(3).

7 Transport Act 2000 s 27(4). The Secretary of State and the CAA may propose a person to manage the company's affairs, business and property while an air traffic administration order is in force, and, if they do, the court must appoint that person: s 27(5).

8 I.e. an order made under the Transport Act 2000 s 27 (see the text and notes 1-7) or s 28 (see the text and notes 16-28).

9 'Business' includes a trade or profession: see the Insolvency Act 1986 s 436; and the Transport Act 2000 ss 26(6)(a), 29(5).

10 'Property' includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property: see the Insolvency Act 1986 s 436; and the Transport Act 2000 ss 26(6)(a), 29(5).

11 Transport Act 2000 s 29(1). For these purposes, the reference in the text to the court is a reference to the court making the order: s 29(6).

The power given under the Insolvency Act 1986 s 411 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 1041) to make rules applies with modifications for the purpose of giving effect to the air traffic administration order provisions: see the Transport Act 2000 s 30(5). Certain provisions of the Insolvency Act 1986 relating to administration orders are also applied with modifications to air traffic administration orders: see the Transport Act 2000 s 30(4), Sch 1. Provision is also made with respect to transfer schemes following the making of an air traffic administration order where a new company is to carry out the licensed activities: see s 30(4), Sch 2.

12 A reference to a licence company's licensed activities is a reference to the activities which the licence concerned authorises the company to carry out: Transport Act 2000 s 29(4).

13 Transport Act 2000 s 29(1)(a), (2).

14 Transport Act 2000 s 29(1)(a), (3).

15 Transport Act 2000 s 29(1)(b).

16 A petition under the Transport Act 2000 s 28 cannot be withdrawn except with the leave of the court to which the application by petition is made: s 30(1), (7). Certain provisions of the Insolvency Act 1986 are applied with modifications to petitions under the Transport Act 2000 s 28: see s 30(2), (3).

17 Transport Act 2000 s 28(1).

18 Transport Act 2000 s 28(2). For these purposes, a company is unable to pay its debts if it is deemed to be unable to do so under the Insolvency Act 1986 s 123 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 446): Transport Act 2000 ss 26(6)(b), 28(6).

19 I.e. under the Insolvency Act 1986 s 124A: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 444.

20 See the Transport Act 2000 ss 26(6)(b), 28(3).

21 I.e. a duty imposed on the holder by the Transport Act 2000 s 8 (see PARA 144): ss 20(10)(a), 28(7). As to the meaning of 'licence' see PARA 139 note 4.

22 I.e. under the Transport Act 2000 s 22(10) or (11): see PARA 152. As to the service of documents see PARA 81 note 13.

23 Transport Act 2000 s 28(4).

24 I.e. an order for securing compliance: see PARA 151.

25 See note 21.

26 As to the meaning of 'condition of a licence' see PARA 143 note 10. In relation to a licence holder, a licence condition is a condition of the licence concerned: Transport Act 2000 ss 20(10)(b), 28(7).

27 Ie under the Transport Act 2000 s 23: see PARA 153.

28 Transport Act 2000 s 28(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(iv) Financial Protection and Administration Orders/159. Government financial help.

159. Government financial help.

If an air traffic administration order¹ is in force in relation to a company, the Secretary of State² may make grants or loans to the company of such sums as he thinks appropriate to facilitate the achievement of the order's purposes³. The terms on which a grant is made may require all or part of it to be repaid to the Secretary of State if there is a contravention of the other terms on which it is made⁴, and a loan made under these provisions must be repaid to the Secretary of State at such times and by such methods, and interest must be paid to him at such rates and times, as may be specified in directions given by him from time to time⁵. The Secretary of State may also agree to indemnify the air traffic administrator⁶ in respect of liabilities incurred and loss or damage sustained by him in connection with carrying out his functions under the order⁷. A grant, loan, agreement to indemnify, or direction under these provisions requires the Treasury's consent⁸.

The Secretary of State may also guarantee, in such manner and on such terms as he thinks fit, the repayment of the principal of, the payment of interest on, and the discharge of, any other financial obligation in connection with any sum borrowed from any person by a company in relation to which an air traffic administration order is in force when the guarantee is given⁹. Such a guarantee requires the Treasury's consent¹⁰. Immediately after such a guarantee is given the Secretary of State must lay a statement of it before each House of Parliament¹¹. If a sum is paid out for fulfilling a guarantee, as soon as possible after the end of each relevant financial year¹² the Secretary of State must lay a statement relating to the sum before each House of Parliament¹³. If any sums are paid out for fulfilling a guarantee, the borrowing company¹⁴ must make to the Secretary of State at such times and in such manner as may be specified in directions given by him from time to time¹⁵ (1) payments of such amounts as he may specify in such directions in or towards repayment of the sums paid out¹⁶; and (2) payments of interest at such rate as he may specify in such directions on what is outstanding in respect of sums paid out¹⁷.

1 As to air traffic administration orders see PARA 158.

2 As to the Secretary of State see PARA 33.

3 Transport Act 2000 s 31(1)(a).

4 Transport Act 2000 s 31(3). The provisions of s 31(3), (4) do not prejudice any provision applied in relation to the company by s 30(4), Sch 1 (see PARA 158): s 31(5).

5 Transport Act 2000 s 31(4). See also note 4. As to directions see further PARA 38 note 2.

6 The air traffic administrator is the person appointed by the court to achieve the purposes of the air traffic administration order: Transport Act 2000 s 31(7).

7 Transport Act 2000 s 31(1)(b).

8 Transport Act 2000 s 31(6). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

9 Transport Act 2000 s 31(2).

10 Transport Act 2000 s 31(6).

11 Transport Act 2000 s 32(1), (2).

12 Relevant financial years are financial years starting with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and interest on it is finally discharged: Transport Act 2000 s 32(7).

13 Transport Act 2000 s 32(3).

14 The borrowing company is the company that borrowed the sums in respect of which the guarantee was given: Transport Act 2000 s 32(8).

15 Transport Act 2000 s 32(4). Section 32(4) does not prejudice any provision applied in relation to the borrowing company by Sch 1 (see PARA 158): s 32(5). A direction under s 32 requires the Treasury's consent: s 32(6).

16 Transport Act 2000 s 32(4)(a).

17 Transport Act 2000 s 32(4)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(v) Licensing of Air Traffic Controllers/A. COMMUNITY AIR TRAFFIC CONTROLLER'S LICENCE/160. Provision for Community air traffic controller licensing.

(v) Licensing of Air Traffic Controllers

A. COMMUNITY AIR TRAFFIC CONTROLLER'S LICENCE

160. Provision for Community air traffic controller licensing.

The European Directive on a Community air traffic controller licence¹ aims to establish a system of licensing for air traffic controllers throughout the European union; it provides for the harmonisation and mutual recognition of licences between the member states, and lays down competence requirements.

¹ ie European Parliament and Council Directive 2006/23 (OJ L114, 27.04.2006, pp 22-37).

UPDATE

160 Provision for Community air traffic controller licensing

TEXT AND NOTES--Directive 2006/23 repealed: European Parliament and EC Council Regulation 1108/2009 (OJ L309, 24.11.2009, p 51). See now European Parliament and EC Council Regulation 1108/2009; and PARA 24.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(v) Licensing of Air Traffic Controllers/B. UNITED KINGDOM AIR TRAFFIC CONTROLLER'S LICENCE/161. Licensing of air traffic controllers.

B. UNITED KINGDOM AIR TRAFFIC CONTROLLER'S LICENCE

161. Licensing of air traffic controllers.

The Civil Aviation Authority ('CAA')¹ may grant licences, subject to any conditions it thinks fit, authorising the holder to act as an air traffic controller or student air traffic controller² in the United Kingdom, on being satisfied that the applicant is a fit person to act in the capacity to which the licence relates³ and is qualified by reason of his knowledge, experience, skill and physical and mental fitness to act in the capacity to which the licence relates, for which purpose he must furnish such evidence and undergo such examinations, assessments and tests (including in particular medical examinations) and undertake such courses of training⁴ as the CAA may require of him⁵.

The CAA may grant a licence subject to such conditions as it thinks fit to any person aged 18 years or more to act as a flight information service officer⁶ upon its being satisfied that the applicant is a fit person to hold the licence and is qualified by reason of his knowledge, experience, competence, skill and physical and mental fitness so to act, and for that purpose the applicant must furnish such evidence and undergo such examinations and tests and undertake such courses of training as the CAA may require of him⁷.

An appeal lies to a county court from any decision of the CAA that a person is not a fit person to hold such a licence; and if the court is satisfied that on the evidence submitted to the CAA it was wrong in so deciding, the court may reverse the CAA's decision and the CAA must give effect to the court's determination⁸. No appeal lies, however, from a decision that the applicant was not qualified to hold the licence by reason of a deficiency in his knowledge, experience, competence, skill, physical or mental fitness⁹.

1 As to the CAA see PARA 50 et seq.

2 For the purposes of the Air Navigation Order 2005, SI 2005/1970, Pt 10 (arts 107-128) and Sch 11, 'acting as an air traffic controller' means either giving an air traffic control service or the supervision of a student air traffic controller, or both; and 'acting as a student air traffic controller' means giving an air traffic control service under the supervision of an air traffic controller: art 120. 'Air traffic control service' means the giving of instructions, advice or information by means of radio signals to aircraft in the interests of safety: art 155(1).

3 A student air traffic controller's licence must not be granted to a person under the age of 18; and an air traffic controller's licence must not be granted to a person under the age of 20: Air Navigation Order 2005, SI 2005/1970, art 108(3)(d), Sch 11 Pt A paras 1(1), 2(1). As to the United Kingdom see PARA 30 note 1.

4 The CAA may, for the purposes of the Air Navigation Order 2005, SI 2005/1970, Pt 10, (1) approve any course of training or instruction; (2) authorise a person to conduct such examinations, assessments or tests as it may specify; (3) approve a person to provide any course of training or instruction; and (4) approve a simulator: art 119. No part of any examination, assessment or test undertaken for the purposes of Pt 10 or Sch 11 or any training which has been approved under art 119 may be undertaken in a simulator unless that simulator has been approved by the CAA: art 118.

5 Air Navigation Order 2005, SI 2005/1970, art 108(1), (2). As to licences generally see PARAS 92-97. The holder of an air traffic controller's or a student air traffic controller's licence must, upon such occasions as the CAA may require, submit himself for such examinations, assessments and tests (including medical examinations) and furnish such evidence as to his knowledge, experience, competence and skill and undergo such courses of training, as the CAA may require: art 108(5). On the basis of such a medical examination, the CAA or any person approved by it as competent to do so may issue a medical certificate subject to such conditions as it or he thinks fit to the effect that the holder of the licence has been assessed as fit to perform

the functions to which the licence relates: art 112(1). A person who, on the last occasion when he was examined, assessed or tested for the purposes of Pt 10, failed that examination, assessment or test is not entitled to act in the capacity for which that examination, assessment or test would have qualified him had he passed it: art 117.

6 'Flight information service' means (1) in the case of an aerodrome (a) the giving of information by means of radio signals to aircraft flying in or intending to fly within the aerodrome traffic zone of that aerodrome; and (b) the grant or refusal of a permission under the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 40 or r 41(2) (see PARAS 304-305); (2) in the case of an area control centre (see PARA 164 note 3), the giving of information by means of radio signals to aircraft: Air Navigation Order 2005, SI 2005/1970, art 155(1); Interpretation Act 1978 s 17(2). 'Aerodrome flight information service' is to be construed accordingly: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'aerodrome' see PARA 175.

7 Air Navigation Order 2005, SI 2005/1970, art 122(1). Every holder of a flight information service officer's licence must upon such occasions as the CAA may require, submit himself to such examinations and tests and furnish such evidence as to his knowledge, experience, competence and skill and undergo such courses of training as the CAA may require: art 122(6).

8 Air Navigation Order 2005, SI 2005/1970, art 154(1). The CAA must be a respondent to an appeal: art 154(5). For the purposes of any provision relating to the time within which an appeal may be brought, the CAA's decision is deemed to have been taken on the date on which the CAA furnished a statement of its reasons for the decision to the applicant or licence holder or former holder: art 154(6). As to the procedure for an appeal see PARA 132.

9 Air Navigation Order 2005, SI 2005/1970, art 154(2).

UPDATE

161-170 United Kingdom air traffic controller's licence

SI 2005/1970 Pt 10, Sch 11 substituted: SI 2009/1742. The significant changes are as follows. A person must not act as an air traffic controller or a student air traffic controller unless he holds a licence to do so granted by the CAA or recognised by the CAA: SI 2005/1970 arts 107, 107A-107C. The CAA must grant a licence if the applicant fulfils the requirements set out for a student licence (see SI 2005/1970 art 108) and for a full licence (see SI 2005/1970 art 108A). Such requirements include a requirement for a language endorsement to be included in the licence (see SI 2005/1970 arts 108, 108B, 108C and Sch 11 Pt B) and minimum educational requirements (see SI 2005/1970 art 108(3)). As to requirements in relation to the grant of medical certificates, see SI 2005/1970 art 113. As to the certification of training providers, see SI 2005/1970 art 119A. Provision is also made for the mutual recognition of air traffic controller's licences issued by the national supervisory authorities of other member states: see SI 2005/1970 art 119C. As to the penalties for contravention of certain provisions of Pt 10, see SI 2005/1970 art 148(8), (8A) (added by SI 2009/1742).

161 Licensing of air traffic controllers

NOTE 2--'Air traffic control service' means a service provided for the purpose of preventing collisions between aircraft, and, on the manoeuvring area, between aircraft and obstructions, and expediting and maintaining an orderly flow of air traffic: SI 2005/1970 art 155(1) (definition substituted by SI 2009/1742).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(v) Licensing of Air Traffic Controllers/B. UNITED KINGDOM AIR TRAFFIC CONTROLLER'S LICENCE/162. Air traffic controller's licence.

162. Air traffic controller's licence.

The Civil Aviation Authority ('CAA')¹ may include in an air traffic controller's licence², subject to such conditions as it thinks fit, any of a number of specified ratings and endorsements³, upon its being satisfied that the applicant is qualified⁴ to act in the capacity to which the rating or endorsement relates, and such rating or endorsement is deemed to form part of the licence⁵. The holder of an air traffic controller's licence is not entitled to exercise the privileges of a rating or endorsement contained in the licence unless the licence includes a current unit licence endorsement specifying that the rating or endorsement is valid for (1) the aerodrome or place at which he so acts; (2) the sector on which or the operational position⁶ at which he so acts; and (3) the surveillance equipment (if any) with which he so acts⁷.

Subject to the above and to any conditions of the licence, an air traffic controller's licence entitles the holder to (a) act as an air traffic controller for any sector or operational position for which a valid rating and endorsement and current unit licence endorsement are included in the licence and to exercise the privileges of a student air traffic controller's licence⁸; and (b) exercise the privileges of any rating or endorsement included⁹ in the licence¹⁰.

1 As to the CAA see PARA 50 et seq.

2 As to applications for such a licence see PARA 161.

3 As specified in the Air Navigation Order 2005, SI 2005/1970, art 108, Sch 11 Pt B. As to ratings see PARA 166.

4 As specified in the Air Navigation Order 2005, SI 2005/1970, art 108(2)(b): see PARA 161.

5 Air Navigation Order 2005, SI 2005/1970, art 108(4), Sch 11 Pt B para 1.

6 'Operational position' means a position provided and equipped for the purpose of providing a particular type of air traffic control service: Air Navigation Order 2005, SI 2005/1970, art 155(1).

7 Air Navigation Order 2005, SI 2005/1970, art 110(1). A unit licence endorsement may be entered in a licence either by the CAA or by the holder of an air traffic controller's licence which includes an examiner licence endorsement: art 110(2).

8 See the Air Navigation Order 2005, SI 2005/1970, Sch 11 Pt A para 1(3).

9 As specified in the Air Navigation Order 2005, SI 2005/1970, Sch 11 Pt B.

10 Air Navigation Order 2005, SI 2005/1970, art 109(1).

UPDATE

161-170 United Kingdom air traffic controller's licence

SI 2005/1970 Pt 10, Sch 11 substituted: SI 2009/1742. The significant changes are as follows. A person must not act as an air traffic controller or a student air traffic controller unless he holds a licence to do so granted by the CAA or recognised by the CAA: SI 2005/1970 arts 107, 107A-107C. The CAA must grant a licence if the applicant fulfils the requirements set out for a student licence (see SI 2005/1970 art 108) and for a full licence (see SI 2005/1970 art 108A). Such requirements include a requirement for

a language endorsement to be included in the licence (see SI 2005/1970 arts 108, 108B, 108C and Sch 11 Pt B) and minimum educational requirements (see SI 2005/1970 art 108(3)). As to requirements in relation to the grant of medical certificates, see SI 2005/1970 art 113. As to the certification of training providers, see SI 2005/1970 art 119A. Provision is also made for the mutual recognition of air traffic controller's licences issued by the national supervisory authorities of other member states: see SI 2005/1970 art 119C. As to the penalties for contravention of certain provisions of Pt 10, see SI 2005/1970 art 148(8), (8A) (added by SI 2009/1742).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(v) Licensing of Air Traffic Controllers/B. UNITED KINGDOM AIR TRAFFIC CONTROLLER'S LICENCE/163. Student air traffic controller's licence.

163. Student air traffic controller's licence.

Subject to the requirement to maintain the validity of ratings and endorsements¹, a student air traffic controller's licence entitles the holder to exercise the following privileges²: to act as an air traffic controller under the supervision of another person who is present at the time and who is the holder of an air traffic controller's licence entitling him to provide unsupervised the type of air traffic control service³ which is being provided by the student air traffic controller and holds an on the job training instructor licence endorsement⁴.

1 le the requirements of the Air Navigation Order 2005, SI 2005/1970, art 110 (see PARA 162).

2 See the Air Navigation Order 2005, SI 2005/1970, s 108, Sch 11 Pt A para 2(3). As to applications for such a licence see PARA 161.

3 As to the meaning of 'air traffic control service' see PARA 161 note 2.

4 Air Navigation Order 2005, SI 2005/1970, art 109(2).

UPDATE

161-170 United Kingdom air traffic controller's licence

SI 2005/1970 Pt 10, Sch 11 substituted: SI 2009/1742. The significant changes are as follows. A person must not act as an air traffic controller or a student air traffic controller unless he holds a licence to do so granted by the CAA or recognised by the CAA: SI 2005/1970 arts 107, 107A-107C. The CAA must grant a licence if the applicant fulfils the requirements set out for a student licence (see SI 2005/1970 art 108) and for a full licence (see SI 2005/1970 art 108A). Such requirements include a requirement for a language endorsement to be included in the licence (see SI 2005/1970 arts 108, 108B, 108C and Sch 11 Pt B) and minimum educational requirements (see SI 2005/1970 art 108(3)). As to requirements in relation to the grant of medical certificates, see SI 2005/1970 art 113. As to the certification of training providers, see SI 2005/1970 art 119A. Provision is also made for the mutual recognition of air traffic controller's licences issued by the national supervisory authorities of other member states: see SI 2005/1970 art 119C. As to the penalties for contravention of certain provisions of Pt 10, see SI 2005/1970 art 148(8), (8A) (added by SI 2009/1742).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(v) Licensing of Air Traffic Controllers/B. UNITED KINGDOM AIR TRAFFIC CONTROLLER'S LICENCE/164. Flight information service officer's licence.

164. Flight information service officer's licence.

A flight information service officer's licence¹ does not authorise the giving of a flight information service² at an aerodrome or area control centre³ unless that aerodrome or area control centre has been specified in the licence by a person authorised by the Civil Aviation Authority ('CAA')⁴ for the purpose and the licence has been validated in respect of that aerodrome or area control centre by a person authorised for the purpose by the CAA⁵.

If, throughout any period of 90 days the holder of the licence has not at any time given such a service at a particular aerodrome or area control centre, the licence ceases to be valid for that aerodrome or area control centre at the end of that period until the licence has been revalidated in respect of that aerodrome or area control centre by a person authorised by the CAA for the purpose⁶.

1 As to applications for such a licence see PARA 161.

2 As to the meaning of 'flight information service' see PARA 161 note 6. As to the meaning of 'aerodrome' see PARA 175.

3 'Area control centre' means an air traffic control unit established to provide an area control service to aircraft flying within a notified flight information region which are not receiving an aerodrome control service or an approach control service: Air Navigation Order 2005, SI 2005/1970, art 155(1). 'Air traffic control unit' means a person appointed by a person maintaining an aerodrome or place to provide an air traffic control service; and 'area control service' means an air traffic control service for any aircraft which is flying neither in nor in the vicinity of an aerodrome traffic zone: art 155(1). As to the meaning of 'air traffic control service' see PARA 161 note 2. As to the meanings of 'aerodrome control service' and 'approach control service' see PARA 546 note 13.

4 As to the CAA see PARA 50 et seq.

5 Air Navigation Order 2005, SI 2005/1970, art 122(3).

6 Air Navigation Order 2005, SI 2005/1970, art 122(4).

UPDATE

161-170 United Kingdom air traffic controller's licence

SI 2005/1970 Pt 10, Sch 11 substituted: SI 2009/1742. The significant changes are as follows. A person must not act as an air traffic controller or a student air traffic controller unless he holds a licence to do so granted by the CAA or recognised by the CAA: SI 2005/1970 arts 107, 107A-107C. The CAA must grant a licence if the applicant fulfils the requirements set out for a student licence (see SI 2005/1970 art 108) and for a full licence (see SI 2005/1970 art 108A). Such requirements include a requirement for a language endorsement to be included in the licence (see SI 2005/1970 arts 108, 108B, 108C and Sch 11 Pt B) and minimum educational requirements (see SI 2005/1970 art 108(3)). As to requirements in relation to the grant of medical certificates, see SI 2005/1970 art 113. As to the certification of training providers, see SI 2005/1970 art 119A. Provision is also made for the mutual recognition of air traffic controller's licences issued by the national supervisory authorities of other member

states: see SI 2005/1970 art 119C. As to the penalties for contravention of certain provisions of Pt 10, see SI 2005/1970 art 148(8), (8A) (added by SI 2009/1742).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(v) Licensing of Air Traffic Controllers/B. UNITED KINGDOM AIR TRAFFIC CONTROLLER'S LICENCE/165. Validity of licences.

165. Validity of licences.

A licence to act as an air traffic controller, a student air traffic controller or a flight information service officer is not valid unless signed in ink or indelible pencil by the holder with his ordinary signature¹.

Such a licence remains in force for the period indicated in the licence, not exceeding the prescribed maximum period of validity for that licence², and may be renewed from time to time by the Civil Aviation Authority ('CAA')³ upon its being satisfied that the applicant is a fit person and is qualified to act⁴. The CAA has the right to suspend, revoke or vary any licence or certificate⁵.

The holder of an air traffic controller's or student air traffic controller's licence must not provide any type of air traffic control service⁶ unless his licence includes a valid medical certificate⁷. Such a certificate is deemed to form part of the licence⁸.

1 Air Navigation Order 2005, SI 2005/1970, arts 108(3)(e), 122(5). As to such licences see PARAS 161-164.

2 There is no maximum period of validity for an air traffic controller's licence, but the maximum period of validity for a student air traffic controller's licence is two years: Air Navigation Order 2005, SI 2005/1970, art 108, Sch 11 Pt A paras 1(2), 2(2).

3 As to the CAA see PARA 50 et seq.

4 Air Navigation Order 2005, SI 2005/1970, arts 108(3)(a), (c), 122(2). If no period is indicated in the licence it remains in force for the lifetime of the holder: arts 108(3)(b), 122(2)(b). As to the qualifications required see PARA 161.

5 See the Air Navigation Order 2005, SI 2005/1970, art 92; and PARA 490.

6 As to the meaning of 'air traffic control service' see PARA 161 note 2.

7 Air Navigation Order 2005, SI 2005/1970, art 112(3), (4). As to the issue of medical certificates see PARA 161.

8 Air Navigation Order 2005, SI 2005/1970, art 112(2).

UPDATE

161-170 United Kingdom air traffic controller's licence

SI 2005/1970 Pt 10, Sch 11 substituted: SI 2009/1742. The significant changes are as follows. A person must not act as an air traffic controller or a student air traffic controller unless he holds a licence to do so granted by the CAA or recognised by the CAA: SI 2005/1970 arts 107, 107A-107C. The CAA must grant a licence if the applicant fulfils the requirements set out for a student licence (see SI 2005/1970 art 108) and for a full licence (see SI 2005/1970 art 108A). Such requirements include a requirement for a language endorsement to be included in the licence (see SI 2005/1970 arts 108, 108B, 108C and Sch 11 Pt B) and minimum educational requirements (see SI 2005/1970 art 108(3)). As to requirements in relation to the grant of medical certificates, see SI 2005/1970 art 113. As to the certification of training providers, see SI 2005/1970 art 119A. Provision is also made for the mutual recognition of air traffic

controller's licences issued by the national supervisory authorities of other member states: see SI 2005/1970 art 119C. As to the penalties for contravention of certain provisions of Pt 10, see SI 2005/1970 art 148(8), (8A) (added by SI 2009/1742).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(v) Licensing of Air Traffic Controllers/B. UNITED KINGDOM AIR TRAFFIC CONTROLLER'S LICENCE/166. Ratings and endorsements.

166. Ratings and endorsements.

There are three classes of ratings and endorsements relating to air traffic controllers: (1) aerodrome control ratings and endorsements, comprising an aerodrome control visual rating and an aerodrome control instrument rating with five endorsements; (2) approach control ratings and endorsements, comprising an approach control procedural rating and an approach control surveillance rating with six endorsements; (3) area control ratings and endorsements, comprising an area control procedural rating with one endorsement and an area control surveillance rating with four endorsements¹. The holder of a licence which includes ratings of two or more classes may not at any one time perform the functions specified in respect of more than one of those ratings, except that (a) the functions of an aerodrome control instrument rating and an approach control procedural rating may be exercised at the same time; and (b) an aerodrome control instrument rating and an approach control surveillance rating may be exercised at the same time, provided that the holder may not exercise the functions of any radar rating endorsement, surveillance radar approach rating endorsement or precision approach radar rating endorsement included in the approach control surveillance rating².

There are three types of licence endorsement: (i) an examiner licence endorsement; (ii) an on the job training instructor licence endorsement; and (iii) a unit licence endorsement³.

When a rating ceases to be valid for a sector or operational position⁴ the holder of the licence must forthwith notify the person approved⁵ to provide an air traffic control service⁶ for that sector or operational position⁷. When a rating contained in an air traffic controller licence ceases to be valid for a sector or operational position and is not valid for any other sector or operational position the holder of the licence must notify the Civil Aviation Authority ('CAA')⁸ and forward his licence to the CAA, or a person approved by the CAA for the purpose, who must endorse the licence accordingly and return it to the holder⁹. Whenever a person ceases to act as an air traffic controller¹⁰ at a particular unit he must notify the CAA and forward his licence to the CAA, or a person approved by the CAA for the purpose, who must endorse the licence accordingly and return it to the holder¹¹.

1 See the Air Navigation Order 2005, SI 2005/1970, art 108, Sch 11 Pt B para 3. The air traffic control services which the holder of a licence is entitled to perform are specified in respect of each rating: see Sch 11 para 2.

2 See the Air Navigation Order 2005, SI 2005/1970, Sch 11 Pt B para 2(1), (2). However, when a surveillance radar approach terminating at a point less than 2 nautical miles from the point of intersection of the glide path with the runway is being provided under an approach control surveillance rating, no other function under the approach control surveillance rating may be exercised at the same time: Sch 11 Pt B para 2(3).

3 See the Air Navigation Order 2005, SI 2005/1970, Sch 11 Pt B para 4.

4 As to the meaning of 'operational position' see PARA 162 note 6.

5 Ie under the Air Navigation Order 2005, SI 2005/1970, art 100 (see PARA 546).

6 As to the meaning of 'air traffic control service' see PARA 161 note 2.

7 Air Navigation Order 2005, SI 2005/1970, art 111(1).

8 As to the CAA see PARA 50 et seq.

9 Air Navigation Order 2005, SI 2005/1970, art 111(2).

10 As to the meaning of 'act as an air traffic controller' see PARA 161 note 2.

11 Air Navigation Order 2005, SI 2005/1970, art 111(3).

UPDATE

161-170 United Kingdom air traffic controller's licence

SI 2005/1970 Pt 10, Sch 11 substituted: SI 2009/1742. The significant changes are as follows. A person must not act as an air traffic controller or a student air traffic controller unless he holds a licence to do so granted by the CAA or recognised by the CAA: SI 2005/1970 arts 107, 107A-107C. The CAA must grant a licence if the applicant fulfils the requirements set out for a student licence (see SI 2005/1970 art 108) and for a full licence (see SI 2005/1970 art 108A). Such requirements include a requirement for a language endorsement to be included in the licence (see SI 2005/1970 arts 108, 108B, 108C and Sch 11 Pt B) and minimum educational requirements (see SI 2005/1970 art 108(3)). As to requirements in relation to the grant of medical certificates, see SI 2005/1970 art 113. As to the certification of training providers, see SI 2005/1970 art 119A. Provision is also made for the mutual recognition of air traffic controller's licences issued by the national supervisory authorities of other member states: see SI 2005/1970 art 119C. As to the penalties for contravention of certain provisions of Pt 10, see SI 2005/1970 art 148(8), (8A) (added by SI 2009/1742).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(v) Licensing of Air Traffic Controllers/B. UNITED KINGDOM AIR TRAFFIC CONTROLLER'S LICENCE/167. Flight information service to be in accordance with the manual.

167. Flight information service to be in accordance with the manual.

A person must not provide a flight information service¹ at any aerodrome² or area control centre³ unless⁴ (1) it is provided in accordance with the standards and procedures specified in a flight information service manual in respect of that aerodrome or area control centre⁵; (2) the manual is produced to the Civil Aviation Authority ('CAA')⁶ within a reasonable time after a request for its production is made by the CAA⁷; and (3) such amendments or additions have been made to the manual as the CAA may from time to time require⁸.

1 As to the meaning of 'flight information service' see PARA 161 note 6.

2 As to the meaning of 'aerodrome' see PARA 175.

3 As to the meaning of 'area control centre' see PARA 164 note 3.

4 Air Navigation Order 2005, SI 2005/1970, art 123.

5 Air Navigation Order 2005, SI 2005/1970, art 123(a).

6 As to the CAA see PARA 50 et seq.

7 Air Navigation Order 2005, SI 2005/1970, art 123(b).

8 Air Navigation Order 2005, SI 2005/1970, art 123(c). A person acting in contravention of art 123 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

UPDATE

161-170 United Kingdom air traffic controller's licence

SI 2005/1970 Pt 10, Sch 11 substituted: SI 2009/1742. The significant changes are as follows. A person must not act as an air traffic controller or a student air traffic controller unless he holds a licence to do so granted by the CAA or recognised by the CAA: SI 2005/1970 arts 107, 107A-107C. The CAA must grant a licence if the applicant fulfils the requirements set out for a student licence (see SI 2005/1970 art 108) and for a full licence (see SI 2005/1970 art 108A). Such requirements include a requirement for a language endorsement to be included in the licence (see SI 2005/1970 arts 108, 108B, 108C and Sch 11 Pt B) and minimum educational requirements (see SI 2005/1970 art 108(3)). As to requirements in relation to the grant of medical certificates, see SI 2005/1970 art 113. As to the certification of training providers, see SI 2005/1970 art 119A. Provision is also made for the mutual recognition of air traffic controller's licences issued by the national supervisory authorities of other member states: see SI 2005/1970 art 119C. As to the penalties for contravention of certain provisions of Pt 10, see SI 2005/1970 art 148(8), (8A) (added by SI 2009/1742).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(v) Licensing of Air Traffic Controllers/B. UNITED KINGDOM AIR TRAFFIC CONTROLLER'S LICENCE/168. Prohibition of unlicensed air traffic controllers and flight information service officers.

168. Prohibition of unlicensed air traffic controllers and flight information service officers.

A person must not act as an air traffic controller¹ or hold himself out, whether by use of a radio call sign or in any other way, as a person who may so act unless he is the holder of, and complies with the privileges and conditions of²:

- 135 (1) a valid student air traffic controller's licence³;
- 136 (2) an appropriate air traffic controller's licence⁴; or
- 137 (3) a valid air traffic controller's licence which is not appropriate but he is supervised as though he was the holder of a student air traffic controller's licence⁵.

A person must not act as a flight information service officer⁶ at any aerodrome⁷ or area control centre⁸ or hold himself out, whether by use of a radio call sign or in any other way, as a person who may so act unless he is the holder of and complies with the terms of a flight information service officer's licence authorising him to act as such at that aerodrome or area control centre⁹.

A person may not act as an air traffic controller or provide a flight information service unless he has identified himself in such a manner as may be notified¹⁰.

1 As to the meaning of 'act as an air traffic controller' see PARA 161 note 2.

2 Air Navigation Order 2005, SI 2005/1970, art 107(1). This provision is expressed to be subject to art 107(3), (4) (see PARA 169). A person acting in contravention of art 107 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

3 Air Navigation Order 2005, SI 2005/1970, art 107(1)(a). As to student air traffic controllers' licences generally see PARAS 161, 163.

4 Air Navigation Order 2005, SI 2005/1970, art 107(1)(b). As to air traffic controllers' licences see PARA 162. An air traffic controller's licence is not an appropriate licence for the purposes of Pt 10 (arts 107-128) unless it includes valid ratings, endorsements and certificates which authorise the holder to provide, at the aerodrome or place, the type of air traffic control service for the sector on which or the operational position at which it is being provided and with the type of surveillance equipment being used (if any): art 113. As to ratings and endorsements see PARA 166; as to medical certificates see PARA 161. As to the meaning of 'air traffic control service' see PARA 161 note 2. As to the meaning of 'operational position' see PARA 162 note 6.

5 Air Navigation Order 2005, SI 2005/1970, art 107(1)(c).

6 For these purposes, 'acting as a flight information service officer' means giving a flight information service: Air Navigation Order 2005, SI 2005/1970, art 121(3). As to the meaning of 'flight information service' see PARA 161 note 6.

7 As to the meaning of 'aerodrome' see PARA 175.

8 As to the meaning of 'area control centre' see PARA 164 note 3.

9 Air Navigation Order 2005, SI 2005/1970, art 121(1). As to flight information service officers' licences see PARAS 161, 164. A person acting in contravention of art 121 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A.

10 Air Navigation Order 2005, SI 2005/1970, arts 107(2), 121(2).

UPDATE

161-170 United Kingdom air traffic controller's licence

SI 2005/1970 Pt 10, Sch 11 substituted: SI 2009/1742. The significant changes are as follows. A person must not act as an air traffic controller or a student air traffic controller unless he holds a licence to do so granted by the CAA or recognised by the CAA: SI 2005/1970 arts 107, 107A-107C. The CAA must grant a licence if the applicant fulfils the requirements set out for a student licence (see SI 2005/1970 art 108) and for a full licence (see SI 2005/1970 art 108A). Such requirements include a requirement for a language endorsement to be included in the licence (see SI 2005/1970 arts 108, 108B, 108C and Sch 11 Pt B) and minimum educational requirements (see SI 2005/1970 art 108(3)). As to requirements in relation to the grant of medical certificates, see SI 2005/1970 art 113. As to the certification of training providers, see SI 2005/1970 art 119A. Provision is also made for the mutual recognition of air traffic controller's licences issued by the national supervisory authorities of other member states: see SI 2005/1970 art 119C. As to the penalties for contravention of certain provisions of Pt 10, see SI 2005/1970 art 148(8), (8A) (added by SI 2009/1742).

168 Prohibition of unlicensed air traffic controllers and flight information service officers

NOTE 2--SI 2005/1970 Sch 14 Pt A amended: SI 2009/1742.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(v) Licensing of Air Traffic Controllers/B. UNITED KINGDOM AIR TRAFFIC CONTROLLER'S LICENCE/169. Exceptions to prohibitions.

169. Exceptions to prohibitions.

An air traffic controller's licence¹ is not required by any person who, acting in the course of his employment, passes on such instructions or advice as he has been instructed so to do by the holder of an air traffic controller's licence which entitles that holder to give such instructions or advice².

An air traffic controller's licence is not required by any person acting in the course of his duty as a member of any of Her Majesty's naval, military or air forces or a visiting force³.

1 As to air traffic controller's licences see PARAS 161-163.

2 Air Navigation Order 2005, SI 2005/1970, art 107(3).

3 Air Navigation Order 2005, SI 2005/1970, art 107(4).

UPDATE

161-170 United Kingdom air traffic controller's licence

SI 2005/1970 Pt 10, Sch 11 substituted: SI 2009/1742. The significant changes are as follows. A person must not act as an air traffic controller or a student air traffic controller unless he holds a licence to do so granted by the CAA or recognised by the CAA: SI 2005/1970 arts 107, 107A-107C. The CAA must grant a licence if the applicant fulfils the requirements set out for a student licence (see SI 2005/1970 art 108) and for a full licence (see SI 2005/1970 art 108A). Such requirements include a requirement for a language endorsement to be included in the licence (see SI 2005/1970 arts 108, 108B, 108C and Sch 11 Pt B) and minimum educational requirements (see SI 2005/1970 art 108(3)). As to requirements in relation to the grant of medical certificates, see SI 2005/1970 art 113. As to the certification of training providers, see SI 2005/1970 art 119A. Provision is also made for the mutual recognition of air traffic controller's licences issued by the national supervisory authorities of other member states: see SI 2005/1970 art 119C. As to the penalties for contravention of certain provisions of Pt 10, see SI 2005/1970 art 148(8), (8A) (added by SI 2009/1742).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(v) Licensing of Air Traffic Controllers/B. UNITED KINGDOM AIR TRAFFIC CONTROLLER'S LICENCE/170. Incapacity, pregnancy or drunkenness of air traffic controllers.

170. Incapacity, pregnancy or drunkenness of air traffic controllers.

Every holder of an air traffic controller's licence¹ who suffers any personal injury or illness involving incapacity to undertake the functions to which his licence relates throughout a period of 20 consecutive days, or, in the case of a woman, has reason to believe that she is pregnant, must inform the Civil Aviation Authority ('CAA')² of this in writing as soon as possible³. An air traffic controller's medical certificate⁴ ceases to be in force on the expiry of the period of such injury or illness and comes into force again (provided it has not expired) (1) upon the holder being medically examined under arrangements made by the CAA and pronounced fit to resume his functions under the licence; or (2) upon the CAA exempting the holder from the requirement of a medical examination subject to such conditions as the CAA may think fit⁵.

A person must not act as an air traffic controller⁶ if he knows or suspects that he is suffering from or, having regard to the circumstances of the period of duty⁷ to be undertaken, is likely to suffer from, such fatigue as may endanger the safety of any aircraft to which an air traffic control service⁸ may be provided⁹.

A person must not act as an air traffic controller or a student air traffic controller¹⁰ whilst under the influence of drink or a drug to such an extent as to impair his capacity to act as such¹¹.

1 le a licence granted under the Air Navigation Order 2005, SI 2005/1970, art 108: see PARAS 161-163.

2 As to the CAA see PARA 50 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 114(1).

4 As to medical certificates see PARAS 161, 165.

5 Air Navigation Order 2005, SI 2005/1970, art 114(2).

6 As to the meaning of 'acting as an air traffic controller' see PARA 161 note 2.

7 'Period of duty' means the period between the commencement and end of a shift during which an air traffic controller performs, or could be called upon to perform, any of the functions specified in respect of a rating included in his licence: Air Navigation Order 2005, SI 2005/1970, art 155(1).

8 As to the meaning of 'air traffic control service' see PARA 161 note 2.

9 Air Navigation Order 2005, SI 2005/1970, art 115. A person acting in contravention of art 115 is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.

10 As to the meaning of 'act as a student air traffic controller' see PARA 161 note 2.

11 Air Navigation Order 2005, SI 2005/1970, art 116. A person acting in contravention of art 116 is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to offences involving alcohol and drugs see further the Railways and Transport Safety Act 2003 Pt 5 (ss 92-102); and PARA 633 et seq.

UPDATE

161-170 United Kingdom air traffic controller's licence

SI 2005/1970 Pt 10, Sch 11 substituted: SI 2009/1742. The significant changes are as follows. A person must not act as an air traffic controller or a student air traffic controller unless he holds a licence to do so granted by the CAA or recognised by the CAA: SI 2005/1970 arts 107, 107A-107C. The CAA must grant a licence if the applicant fulfils the requirements set out for a student licence (see SI 2005/1970 art 108) and for a full licence (see SI 2005/1970 art 108A). Such requirements include a requirement for a language endorsement to be included in the licence (see SI 2005/1970 arts 108, 108B, 108C and Sch 11 Pt B) and minimum educational requirements (see SI 2005/1970 art 108(3)). As to requirements in relation to the grant of medical certificates, see SI 2005/1970 art 113. As to the certification of training providers, see SI 2005/1970 art 119A. Provision is also made for the mutual recognition of air traffic controller's licences issued by the national supervisory authorities of other member states: see SI 2005/1970 art 119C. As to the penalties for contravention of certain provisions of Pt 10, see SI 2005/1970 art 148(8), (8A) (added by SI 2009/1742).

170 Incapacity, pregnancy or drunkenness of air traffic controllers

NOTES 9, 11--SI 2005/1970 Sch 14 Pt B amended: SI 2009/1742.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(vi) Competition/171. Functions relating to market investigations exercisable by the Civil Aviation Authority.

(vi) Competition

171. Functions relating to market investigations exercisable by the Civil Aviation Authority.

The functions of the Office of Fair Trading¹ in respect of market investigations², so far as they relate to the supply of air traffic services³, are concurrently exercisable by the Civil Aviation Authority ('CAA')⁴. No objection may be taken to anything done by or in relation to the CAA⁵ on the ground that it should have been done by or in relation to the Office of Fair Trading⁶.

1 As to the Office of Fair Trading and its functions generally see **COMPETITION** vol 18 (2009) PARA 6 et seq.

2 I.e. functions under the Enterprise Act 2002 Pt 4 (ss 131-184), other than those relating to the register of undertakings and orders (see s 166) and advice and information (see s 171): see **COMPETITION** vol 18 (2009) PARA 276 et seq.

3 As to the meaning of 'air traffic services' see PARA 34 note 4.

4 Transport Act 2000 ss 85(1), 86(1), (2) (s 85(1) amended by the Enterprise Act 2002 ss 168(9), 278(1), Sch 9 para 23(1), (2), Sch 25 para 44(1), (6); the Transport Act 2000 s 86(1) amended by the Enterprise Act 2002 Sch 25 para 44(7)(a); the Transport Act 2000 s 86(2) substituted by the Enterprise Act 2002 Sch 9 para 24(1), (2)). As to the CAA see PARA 50 et seq. As to the manner in which the CAA must carry out these functions see PARA 172.

In consequence of the provision made for the concurrent exercise of the Office of Fair Trade's functions by the CAA, references to the Office of Fair Trade in the Enterprise Act 2002 Pt 4 (except for ss 166, 171 but including provisions of that Act applied by Pt 4) must be read as including references to the CAA: Transport Act 2000 s 86(4)(a) (amended by the Enterprise Act 2002 Sch 9 para 24(3), Sch 25 para 44(7)(a)). This applies, however, only so far as it is consequential on the Transport Act 2000 s 86(1)-(3), and only if the context does not otherwise require: s 86(5). If a question arises as to whether s 86(1)-(3) applies to a particular case the question must be referred to and determined by the Secretary of State: s 86(6). As to the Secretary of State see PARA 33.

5 I.e. under the Enterprise Act 2002 Pt 4.

6 Transport Act 2000 s 86(7) (amended by the Enterprise Act 2002 Sch 9 para 24(4), Sch 25 para 44(7)(a)).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(vi) Competition/172. Duties in relation to exercise of market investigation functions.

172. Duties in relation to exercise of market investigation functions.

The overriding duty of the Civil Aviation Authority ('CAA')¹ in exercising its functions relating to market investigations concerning the supply of air traffic services² is to maintain a high standard of safety in the provision of air traffic services³. The CAA is also required to exercise those functions⁴ in the manner it thinks best calculated:

- 138 (1) to further the interests⁵ of operators and owners of aircraft, owners and managers of aerodromes⁶, persons travelling in aircraft, and persons with rights in property carried in them⁷;
- 139 (2) to promote efficiency and economy on the part of suppliers of air traffic services⁸;
- 140 (3) to secure that suppliers of air traffic services who are licence holders⁹ will not find it unduly difficult to finance activities authorised by their licences¹⁰;
- 141 (4) to take account of any international obligations of the United Kingdom¹¹ notified to the CAA by the Secretary of State¹² (whatever the time or purpose of the notification)¹³; and
- 142 (5) to take account of any guidance on environmental objectives given to the CAA by the Secretary of State¹⁴.

Before the Office of Fair Trading or the CAA first carries out in relation to any matter a function which is shared concurrently, the one must consult the other¹⁵; and if one has carried out the functions in relation to the matter the other must not carry them out¹⁶. If in carrying out the functions the CAA makes a reference to the Competition Commission¹⁷, it must give specified information to the Commission for the purposes of assisting its investigation¹⁸.

1 As to the CAA see PARA 50 et seq.

2 I.e. its functions under the Enterprise Act 2002 Pt 4 (ss 131-184) (other than ss 166, 171) (see **COMPETITION** vol 18 (2009) PARA 276 et seq), the concurrent exercise of which with the Office of Fair Trading is provided for by the Transport Act 2000 s 86(1), (2) (see PARA 171): see s 87(1) (amended by the Enterprise Act 2002 s 168(9), Sch 9 para 25). As to the meaning of 'air traffic services' see PARA 34 note 4. As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. The CAA must exercise its functions so as to impose on suppliers of air traffic services the minimum restrictions which are consistent with the exercise of those functions: see the Transport Act 2000 s 87(7) (amended by the Enterprise Act 2002 Sch 9 para 25). The Civil Aviation Act 1982 s 4 (see PARA 52), which sets out the general objectives of the CAA, does not apply in relation to the performance by the CAA of these functions: Transport Act 2000 s 87(8) (amended by the Enterprise Act 2002 Sch 9 para 25).

3 See the Transport Act 2000 s 87(2) (amended by the Enterprise Act 2002 Sch 9 para 25).

4 See note 2.

5 'Furthering interests' includes furthering them (where the CAA thinks it appropriate) by promoting competition in the provision of air traffic services: Transport Act 2000 s 87(5). The only interests to be considered under s 87(3)(a) are interests regarding the range, availability, continuity, cost and quality of air traffic services: s 87(4). If in any case there is a conflict in the application of the provisions of s 87(3)-(5) (see the text and notes 6-14), then in relation to that case the CAA must apply those provisions in the manner it thinks is reasonable having regard to them as a whole: s 87(6).

6 As to the meaning of 'aerodrome' see PARA 175; definition applied by the Transport Act 2000 ss 40(1)(a), (2), 85(2)(a). As to the meaning of 'manager of an aerodrome' see PARA 34 note 5; definition applied by ss 40(1)(g), (2), 85(2)(a).

7 Transport Act 2000 s 87(3)(a). See notes 2, 5.

8 Transport Act 2000 s 87(3)(b).

9 As to the meaning of 'licence holder' see PARA 139 note 4; definition applied by the Transport Act 2000 ss 40(1)(e), (5), 85(2)(c).

10 Transport Act 2000 s 87(3)(c). As to the meaning of 'licence' see PARA 139 note 4; definition applied by the Transport Act 2000 ss 40(1)(d), (5), 85(2)(b).

11 As to the United Kingdom see PARA 30 note 1.

12 As to the Secretary of State see PARA 33.

13 Transport Act 2000 s 87(3)(d).

14 Transport Act 2000 s 87(3)(e). The duty is to take account of guidance given after 1 February 2001 (ie the day on which s 87 was brought into force): see s 87(3)(e); and the Transport Act 2000 (Commencement No 3) Order 2001, SI 2001/57.

15 See the Transport Act 2000 s 89(1), (2) (amended by the Enterprise Act 2002 ss 168(9), 278(1), Sch 9 para 26, Sch 25 para 44(1), (8)(a), (b)).

16 See the Transport Act 2000 s 89(3) (amended by the Enterprise Act 2002 Sch 9 para 26, Sch 25 para 44(8)(a)).

17 See PARA 171. As to the Competition Commission see **COMPETITION** vol 18 (2009) PARA 9 et seq. As to the making of monopoly references generally see **COMPETITION** vol 18 (2009) PARA 365.

18 See the Transport Act 2000 s 89(4) (amended by the Enterprise Act 2002 Sch 9 para 26). The information which must be given to the Commission is any information the CAA has which relates to matters within the scope of the investigation and which the Commission requests (Transport Act 2000 s 89(4)(a)) or which the CAA thinks it would be appropriate for it to give without a request (s 89(4)(b)), and any other help which the CAA is able to give in relation to matters within the scope of the investigation and which the Commission requests (s 89(4)(c)). In carrying out its investigation the Commission must take account of any information so given: s 89(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(vi) Competition/173. Functions relating to anti-competitive practices exercisable by the Civil Aviation Authority.

173. Functions relating to anti-competitive practices exercisable by the Civil Aviation Authority.

The functions of the Office of Fair Trading¹ in connection with agreements, decisions or concerted practices which may affect trade within the United Kingdom² or between member states of the European Union and which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom or the common market³, and in connection with conduct amounting to abuse of a dominant market position⁴, so far as they relate to the supply of air traffic services⁵, are concurrently exercisable by the Civil Aviation Authority ('CAA')⁶. With respect to functions that are concurrently exercisable, no objection may be taken to anything done by or in relation to the CAA on the ground that it should have been done by or in relation to the Office of Fair Trading⁷.

In exercising these functions the CAA may, in particular, have regard to any matter to which it must have regard in exercising its functions relating to market investigations⁸.

1 As to the Office of Fair Trading and its functions generally see **COMPETITION** vol 18 (2009) PARAS 6, 7. In consequence of the provision made for the concurrent exercise of the Office of Fair Trade's functions by the CAA, references to the Office of Fair Trade in the Competition Act 1998 Pt I (ss 1-60) (except in ss 31D(1)-(6), 38(1)-(6), 51, 52(6), (8) and 54), must be read as including references to the CAA: Transport Act 2000 s 86(4)(b) (amended by the Enterprise Act 2002 s 278(1), Sch 25 para 44(1), (7)(a); and SI 2004/1261). See also PARA 171 note 4.

2 As to the United Kingdom see PARA 30 note 1.

3 I.e. agreements, decisions or concerted practices which are of the kind mentioned in the Competition Act 1998 s 2(1) (see **COMPETITION** vol 18 (2009) PARA 116) or of the kind mentioned in the EC Treaty (Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179)) art 81(1) (formerly art 85(1); renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97 p 1)) (see **COMPETITION** vol 18 (2009) PARA 61 et seq); Transport Act 2000 s 86(3)(a), (c) (s 86(3) substituted by SI 2004/1261). For the functions of the Office of Fair Trading in connection with such agreements, decisions or practices see the Competition Act 1998 Pt I Ch I (ss 1-16); and **COMPETITION** vol 18 (2009) PARA 116 et seq.

4 I.e. conduct which is of a kind mentioned in the Transport Act 2000 s 18(1) (see **COMPETITION** vol 18 (2009) PARA 125) or in the EC Treaty art 82(1) (formerly art 86(1); as renumbered: see note 3); Transport Act 2000 s 86(3)(b), (d) (as substituted: see note 3). For the functions of the Office of Fair Trading in connection with such conduct see the Competition Act 1998 Pt I Ch II (ss 17-24); and **COMPETITION** vol 18 (2009) PARA 125 et seq.

5 As to the meaning of 'air traffic services' see PARA 34 note 4.

6 See the Transport Act 2000 s 86(1), (3). As to the CAA see PARA 50 et seq. The functions which are exercisable concurrently are those under the Competition Act 1998 Pt I (ss 1-60), excluding those relating to guidance (see s 31D(1)-(6)), the setting of penalty levels (see s 38(1)-(6)) and the making of procedural rules (see s 51); Transport Act 2000 s 86(3) (as substituted: see note 3).

7 Transport Act 2000 s 86(7)(b).

8 Transport Act 2000 s 88 (amended by SI 2003/1398). As to the CAA's functions relating to market investigations see PARA 171; and as to the matters to which the CAA must have regard in exercising those functions see PARA 172.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/3. LICENSING/(4) LICENSING OF AIR TRAFFIC SERVICES/(vii) Maintenance of Register/174. Duty to maintain register.

(vii) Maintenance of Register

174. Duty to maintain register.

The Civil Aviation Authority ('CAA')¹ must compile and maintain a register² for the purposes of the statutory provisions concerned with the authorisation and licensing of air traffic services³, in which it must cause to be entered⁴:

- 143 (1) the provisions of every exemption⁵;
- 144 (2) the provisions of every licence⁶;
- 145 (3) every modification⁷ of the conditions of a licence⁸;
- 146 (4) every revocation or surrender of a licence⁹;
- 147 (5) the provisions of every requirement or determination made or direction, consent or approval given under a licence¹⁰;
- 148 (6) the terms of every notice limiting the scope of a licence holder's authorisation¹¹;
- 149 (7) the terms of every final or provisional order¹²;
- 150 (8) every revocation of a final or provisional order¹³; and
- 151 (9) every notice that a final or provisional order is not to be made or confirmed¹⁴.

1 As to the CAA see PARA 50 et seq.

2 The register must be kept at such premises and in such form as the CAA decides: Transport Act 2000 s 35(2). So far as is practicable the CAA must secure the exclusion from the register of any matter relating to the affairs of a person if the CAA thinks its inclusion would or might seriously and prejudicially affect the person's interests (s 35(5)); and the CAA may be directed by the Secretary of State not to enter anything which would be against the public interest or any person's commercial interests (s 35(6)). The CAA must secure that the contents of the register are available for inspection by the public during such hours as may be specified in an order made by the Secretary of State (s 35(7)), and if requested by any person to do so it must, unless a charge required by a scheme or regulations made under the Civil Aviation Act 1982 s 11 (see PARA 69) is not paid, supply him with a certified true copy of the register or of an extract from it (Transport Act 2000 s 35(8), (9)). As to the Secretary of State see PARA 33. As to directions see further PARA 38 note 2. At the date at which this volume states the law no orders had been made for the purposes of s 35(7). As to orders see further PARA 34 note 4.

3 Transport Act 2000 s 35(1). The statutory provisions concerned with the authorisation and licensing of air traffic services are those of Pt I Ch I (ss 1-40): see PARA 139 et seq.

4 The duty to cause the matters referred to in the Transport Act 2000 s 35(3) (see the text and notes 5-14) to be entered does not extend to anything of which the CAA is unaware: s 35(4).

5 Transport Act 2000 s 35(3)(a). As to the meaning of 'exemption' see PARA 139 note 2. As to exemptions see PARA 140.

6 Transport Act 2000 s 35(3)(b). As to the meaning of 'licence' see PARA 139 note 4. As to licences generally see PARA 141 et seq.

7 As to the meaning of 'modification' see PARA 143 note 3. As to modifications of licences see PARA 145 et seq.

8 Transport Act 2000 s 35(3)(c). As to the meaning of 'condition of a licence' see PARA 143 note 10. As to the conditions which may be included in a licence see PARA 143.

9 Transport Act 2000 s 35(3)(d).

- 10 Transport Act 2000 s 35(3)(e).
- 11 Transport Act 2000 s 35(3)(f). The notices in question are those given under s 9: see PARA 144.
- 12 Transport Act 2000 s 35(3)(g). Final or provisional orders are orders made under s 20: see PARA 151.
- 13 Transport Act 2000 s 35(3)(g). As to the revocation of final or provisional orders see PARA 151.
- 14 Transport Act 2000 s 35(3)(g). The notices in question are those under s 22(10) or s 22(11): see PARA 152.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (1) PROVISION OF AERODROMES/(i) In general/175. Meaning of 'aerodrome'.

4. AERODROMES AND LAND

(1) PROVISION OF AERODROMES

(i) In general

175. Meaning of 'aerodrome'.

'Aerodrome' means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft, and includes any area or space, whether on the ground, on the roof of a building or elsewhere, which is designed, equipped or set apart for affording facilities for the landing and departure of aircraft capable of descending or climbing vertically¹.

¹ Civil Aviation Act 1982 s 105(1); Transport Act 2000 ss 40(1)(a), (2), 84(4); Air Navigation Order 2005, SI 2005/1970, art 155(1). For the purposes of the Air Navigation Order 2005, SI 2005/1970, 'aerodrome' does not include any area the use of which for affording facilities for the landing and departure of aircraft has been abandoned and has not been resumed: art 155(1). As to the meaning of 'aerodrome' for the purposes of the Customs and Excise Management Act 1979 see PARA 310 note 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (1) PROVISION OF AERODROMES/(i) In general/176. Provision of aerodromes.

176. Provision of aerodromes.

Specific powers to establish aerodromes¹ are conferred upon the Secretary of State², on naval, military and air force authorities for the discharge of their various functions³, and, subject to the consent of the Secretary of State, on local authorities⁴. Any person, firm or company may establish an aerodrome⁵, and public bodies have power to transfer their ownership of aerodromes⁶. The Civil Aviation Act 1982 provides that the Civil Aviation Authority ('CAA')⁷ may not establish or acquire any new aerodrome⁸, although it may continue to operate those aerodromes which had been transferred to it by the Civil Aviation Act 1971 or which it had acquired under that Act⁹ and it may, with the consent of the Secretary of State, manage any aerodrome which it does not own¹⁰. The CAA may not discontinue the use of any aerodrome which it owns or manages without the consent of the Secretary of State¹¹.

The establishment and use of aerodromes may be restricted by statutory provisions such as those which (1) relate to town and country planning¹²; (2) limit or mitigate environmental disturbances¹³; and (3) regulate access and air traffic distribution¹⁴.

1 As to the meaning of 'aerodrome' see PARA 175.

2 See the Civil Aviation Act 1982 s 25; and PARA 36. As to the Secretary of State see PARA 33. As to the duties of the Secretary of State in relation to aerodromes vested in him see PARA 251.

3 For the powers of naval, military and air force authorities to acquire and use land for the discharge of their functions see **ARMED FORCES**.

4 See the Civil Aviation Act 1982 s 30; and PARA 47.

5 Note that no compensation is payable in respect of restrictions or prohibitions imposed on the use of an aerodrome established without the consent of the Secretary of State after 31 July 1946: see the Civil Aviation Act 1982 s 45(4); and PARA 212.

6 As to the transfer of undertakings of the British Airports Authority to BAA plc see the Airports Act 1986 Pt I (ss 1-11); and PARA 182. As to the transfer of airport undertakings of local authorities see Pt II (ss 12-28); and PARAS 183-185.

7 As to the CAA see PARA 50 et seq.

8 See the Civil Aviation Act 1982 s 28(1).

9 Ie under the Civil Aviation Act 1971 s 14, Sch 2 (repealed).

10 See the Civil Aviation Act 1982 s 28(1).

11 Civil Aviation Act 1982 s 28(2).

12 See PARA 177.

13 Eg noise and vibration: see PARAS 259-264.

14 See PARA 266 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (1) PROVISION OF AERODROMES/(i) In general/177. Town and country planning.

177. Town and country planning.

Any development or change of use of land which is undertaken or made by the Crown, or by a government department on the Crown's behalf, is exempt from regulation by the legislation relating to town and country planning¹. Thus no planning permission is required for the establishment of an aerodrome by the Secretary of State² or by naval, military or air force authorities³, or for the construction or use of buildings in connection with such an aerodrome. Planning permission would, however, be required before any other person or undertaking could establish an aerodrome or could construct or use buildings in connection with it⁴.

1 This is because the Town and Country Planning Act 1990 has only a limited application to the Crown: see Pt XIII (ss 293-302); and **TOWN AND COUNTRY PLANNING**.

2 As to the power of the Secretary of State to establish aerodromes see PARAS 36, 176. As to the Secretary of State see PARA 33.

3 As to the power of naval, military or air force authorities to establish aerodromes see PARA 176; and **ARMED FORCES**.

4 As to control over development generally see **TOWN AND COUNTRY PLANNING**. As to development of aerodromes etc see **TOWN AND COUNTRY PLANNING**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (1) PROVISION OF AERODROMES/(ii) Types of Aerodromes/178. Government aerodromes.

(ii) Types of Aerodromes

178. Government aerodromes.

'Government aerodrome' means any aerodrome¹ in the United Kingdom² which is in the occupation of any government department or visiting force³. With the concurrence of the Secretary of State⁴, the Civil Aviation Authority ('CAA')⁵ may cause to be notified⁶ any government aerodrome as an aerodrome available for the take-off and landing of aircraft engaged on flights for the purpose of the public transport of passengers⁷ or for the purpose of instruction in flying⁸ or of any classes of such aircraft⁹.

1 As to the meaning of 'aerodrome' see PARA 175.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'visiting force' see PARA 31 note 6.

4 As to the Secretary of State see PARA 33.

5 As to the CAA see PARA 50 et seq.

6 The notification may be subject to such conditions as the CAA thinks fit: see the Air Navigation Order 2005, SI 2005/1970, art 127. 'Notified' means set out with the authority of the CAA in a document published by or under an arrangement entered into with the CAA and entitled 'United Kingdom NOTAM' or 'Air Pilot', and for the time being in force: art 155(1).

7 As to public transport see PARA 363. As to the meaning of 'passenger' see PARA 362 note 5.

8 As to instruction in flying see PARA 454.

9 See the Air Navigation Order 2005, SI 2005/1970, art 127.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (1) PROVISION OF AERODROMES/(ii) Types of Aerodromes/179. Licensed and other aerodromes.

179. Licensed and other aerodromes.

Aerodromes other than government aerodromes¹ in the United Kingdom may be licensed by the Civil Aviation Authority ('CAA')² and are referred to as licensed aerodromes³. An aircraft engaged on flights for the purpose of the public transport of passengers⁴ or for the purpose of instruction in flying⁵ may not take off or land at a place in the United Kingdom other than (1) a government aerodrome which has been so notified or in respect of which the person in charge has given specific permission⁶; or (2) an aerodrome licensed for the take-off and landing of aircraft engaged in such flights⁷. There is nevertheless no general requirement that all aerodromes should be licensed.

1 As to the meaning of 'government aerodrome' see PARA 178.

2 As to the CAA see PARA 50 et seq.

3 Ie under the Air Navigation Order 2005, SI 2005/1970. As to the licensing of aerodromes see art 128; and PARA 226.

4 As to public transport see PARA 363. As to the meaning of 'passenger' see PARA 362 note 5.

5 As to instruction in flying see PARA 454.

6 See the Air Navigation Order 2005, SI 2005/1970, art 126(1)(b); and PARA 271.

7 See the Air Navigation Order 2005, SI 2005/1970, art 126(1)(a); and PARA 271.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (1) PROVISION OF AERODROMES/(ii) Types of Aerodromes/180. Aerodromes which are customs airports.

180. Aerodromes which are customs airports.

A customs airport is any aerodrome¹ which the Secretary of State² has, with the concurrence of the Commissioners for Revenue and Customs³, designated as a place for the landing or departure of aircraft for the purpose of the enactments relating to customs and excise⁴. The Secretary of State has power, with the concurrence of the Commissioners, to revoke any such designation⁵.

All aircraft arriving in the United Kingdom from abroad, or leaving for abroad, must land at or depart from a customs airport⁶.

1 As to the meaning of 'aerodrome' see PARA 175.

2 As to the Secretary of State see PARA 33.

3 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

4 See the Air Navigation Order 2005, SI 2005/1970, art 136(1). As to enactments relating to customs and excise see PARAS 309-316; and **CUSTOMS AND EXCISE**.

5 Air Navigation Order 2005, SI 2005/1970, art 136(2).

6 See PARA 311 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (1) PROVISION OF AERODROMES/(iii) Transfer to Public Companies/181. Introduction.

(iii) Transfer to Public Companies

181. Introduction.

Aerodromes are, or have been, established by the government¹, the Civil Aviation Authority ('CAA')², local authorities³, and private entities and individuals⁴. The Airports Act 1986 provides for public bodies to transfer their property, rights and liabilities in aerodromes⁵.

1 See PARAS 33 et seq, 176.

2 See PARA 176. As to the CAA see PARA 50 et seq.

3 See PARAS 47-49.

4 See PARA 176.

5 See the Airports Act 1986 Pt I (ss 1-11), Pt II (ss 12-28); and PARAS 182-185.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (1) PROVISION OF AERODROMES/(iii) Transfer to Public Companies/182. The British Airports Authority.

182. The British Airports Authority.

Before the enactment of the Airports Act 1986, the British Airports Authority was responsible for the management of the aerodromes which had been vested in it¹.

In 1986, all property, rights and liabilities of the British Airports Authority were vested in BAA plc², a company nominated by the Secretary of State³ and registered under the Companies Act 1985⁴ before shares in BAA plc were offered to the public and admitted to the Official List of the Stock Exchange⁵.

1 See the Airports Authority Act 1965; the Airports Authority Act 1968; and the Airports Authority Act 1975 (all repealed). The aerodromes vested in the British Airports Authority were the London airports of Gatwick, Heathrow and Stansted and the Scottish airports of Aberdeen, Edinburgh, Glasgow and Prestwick.

2 See the Airports Act 1986 s 2 (repealed); the Airports Act 1986 (Commencement No 1 and Appointed Day) Order 1986, SI 1986/1228; and the Airports Act 1986 (Nominated Company) Order 1986, SI 1986/1229. There was power to direct a reorganisation of the undertaking prior to the transfer: see the Airports Act 1986 s 1 (repealed). As to the transfer scheme see further s 75 (amended by the Statute Law (Repeals) Act 2004). The financial structure of BAA plc, its power to issue securities, and government investment, were set out in ss 3-9 (ss 3, 4(1)-(4), 5, 9 repealed). The application of the Trustee Investments Act 1961 was prescribed by the Airports Act 1986 s 11 (repealed). As to corporation tax liability see s 77 (amended by the Income and Corporation Taxes Act 1988 s 844, Sch 29 para 32; the Taxation of Chargeable Gains Act 1992 s 290(1), Sch 10 para 12; and the Finance Act 1996 s 104, Sch 14 para 3).

3 As to the Secretary of State see PARA 33.

4 As to registration under the Companies Act 1985 see **COMPANIES** vol 14 (2009) PARA 24 et seq.

5 As to the privatisation of the British Airports Authority see the White Paper *Airports Policy* (Cmnd 9542) (1985).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (1) PROVISION OF AERODROMES/(iii) Transfer to Public Companies/183. Airport undertakings of local authority.

183. Airport undertakings of local authority.

The Secretary of State¹ may direct a principal council² which controls an airport to form a company to operate the airport as a commercial undertaking³, if the annual turnover⁴ of that airport exceeds £1 million for at least two of the last three financial years prior to the direction⁵. Where such a company has been formed, the principal council must prepare a scheme providing for the transfer to the company of any property, rights or liabilities which it appears to the council to be appropriate to transfer to that company, and must submit the scheme to the Secretary of State for approval⁶. When the scheme comes into force, the property, rights and liabilities affected by the scheme are transferred and vest in accordance with the scheme⁷.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'principal council' see PARA 47 note 1. Where an airport is jointly controlled by two or more principal councils, the Secretary of State may address his direction to such one of those councils as he thinks fit; and that council must consult the other councils before forming the company: see the Airports Act 1986 s 13(3). As to controlling authorities see PARA 185. As to local authorities generally see PARAS 47-49.

3 See the Airports Act 1986 s 13(1). See also PARA 48. The company may carry on any activities which appear to the principal council to be incidental to or connected with carrying on the business of operating the airport as a commercial undertaking: see s 13(1). As to public airport companies see PARA 184.

The Secretary of State may revoke a direction given by him under s 13(1) at any time before a company has been formed in accordance with the direction: s 13(4).

4 For these purposes, 'annual turnover', in relation to the business carried on at an airport by the airport operator, means the aggregate, as stated or otherwise shown in the accounts of the business, of all sums received in the course of the business during a financial year, including grants from a public or local authority but excluding capital receipts and loans made by any person: Airports Act 1986 s 14(2). 'Airport operator' means the person for the time being having the management of an airport or, in relation to a particular airport, the management of that airport: s 82(1). As to the meaning of 'local authority' see PARA 47 note 1. For these purposes, 'financial year' means a period of 12 months ending with 31 March: s 14(2).

5 See the Airports Act 1986 s 14(1), (2). The Secretary of State may by order substitute for the sum for the time being specified in s 14(1) such greater sum as may be specified in the order: s 14(3). Such an order does not affect the validity of any direction in force under s 13(1) immediately before the coming into operation of the order: s 14(4). At the date at which this volume states the law no such order had been made.

Any power conferred on the Secretary of State by the Airports Act 1986 to make an order or regulations is exercisable by statutory instrument: s 79(1). Any such statutory instrument (other than one containing an order appointing a day or an order under s 32 (power to limit aircraft movements at certain airports: see PARA 273)) is subject to annulment in pursuance of a resolution of either House of Parliament: see s 79(2) (amended by the Statute Law (Repeals) Act 2004).

6 See the Airports Act 1986 s 15. As to the transfer scheme see further s 75 (amended by the Statute Law (Repeals) Act 2004).

7 See the Airports Act 1986 s 15(7). Any consent given under the Civil Aviation Act 1982 s 30(1)(a) (see PARA 47) continues in force after the transfer so as to enable the council, through the company, to maintain the airport: see the Airports Act 1986 s 27. As to compensation for loss or diminution in pension rights see s 28.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (1) PROVISION OF AERODROMES/(iii) Transfer to Public Companies/184. Public airport companies.

184. Public airport companies.

A 'public airport company' is a company which carries on the business of operating an airport as a commercial undertaking and which is for the time being a subsidiary of a single principal council¹ or of two or more such councils². A public airport company must be a company limited by shares and must be registered under the Companies Act 1985³.

At least three of the directors of the company, or at least one quarter of their number (whichever is less), must be full-time employees of the company who are qualified to act as directors of the company by virtue of their experience in airport management⁴.

A director who is a paid officer or an employee of the company or of one of its subsidiaries is disqualified from being elected, or being, a member of the council or any of the councils controlling the company⁵.

A director who is not remunerated by the company and who is a member of the controlling council, or any of the controlling councils, may remain as such a member although he will be disqualified from participating in some of the council's activities⁶ and may be excluded from a council meeting by standing orders⁷. A director who is a member of the executive of a controlling council which is operating executive arrangements⁸ is also subject to restrictions in the course of the discharge of any function that is the responsibility of that executive⁹. A person who contravenes the provisions described above is guilty of an offence¹⁰ and is liable on summary conviction to a fine not exceeding level 4 on the standard scale¹¹.

No person who is a full-time officer or employee of a principal council may hold any office or employment under an associated company¹² except as a director who is not also an employee of the company¹³. Any person who contravenes this provision is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale¹⁴.

1 As to the meaning of 'principal council' see PARA 47 note 1.

2 Airports Act 1986 s 16(1). See also *R v Bolton Borough Council, ex p Manchester City Council* (1991) 89 LGR 764; affd 89 LGR 1005, CA. As to the power of a principal council to form a public airport company see PARA 183. As to controlling authorities see PARA 185. As to companies see generally **COMPANIES**.

3 See the Airports Act 1986 s 13(2). The company must be formed before such date as the Secretary of State may specify in his direction under s 13(1) (see PARA 183); see s 13(2). As to the Secretary of State see PARA 33. As to registration under the Companies Act 1985 see **COMPANIES** vol 14 (2009) PARA 24 et seq.

4 See the Airports Act 1986 s 17(1). The Secretary of State may direct, with such qualifications as he thinks fit, that s 17(1) is not to apply to a company which has made satisfactory arrangements for the management of the airport by persons other than its officers or employees: see s 17(2), (3).

5 See the Airports Act 1986 s 18(1). Section 18 applies to a director of a subsidiary of a public airport company as it applies to a director of a public airport company: s 18(7).

6 See the Airports Act 1986 s 18(2). The director concerned may not (1) participate in any consideration or discussion of any contract or proposed contract between the company or one of its subsidiaries and the council; or (2) vote on any question with respect to such a contract (including a contract with any of the constituent councils in the case of a composite authority) or with respect to any other matter relating to the activities of the company or such a subsidiary: see s 18(2)(a), (b). The ban applies equally to committee and sub-committee meetings as it applies to full council meetings: see s 18(6).

7 See the Airports Act 1986 s 18(5). The circumstances justifying the exclusion are consideration of a contract between the company or one of its subsidiaries and the council or of any other matter relating to the company or such a subsidiary: see s 18(5)(a), (b). The exclusion applies equally to committee and sub-committee meetings as it applies to full council meetings: see s 18(6).

8 See under the Local Government Act 2000 Pt II (ss 10-48). As to executive arrangements see **LOCAL GOVERNMENT** vol 69 (2009) PARA 303 et seq.

9 See the Airports Act 1986 s 18(2A) (added in relation to England by SI 2001/2237; and added in relation to Wales by SI 2002/808). The director concerned may not take any action in the consideration of, or the making of any decision with respect to (1) any contract or proposed contract between the company or a subsidiary of the company and the council; or (2) any matter relating to the activities of the company or such a subsidiary: see the Airports Act 1986 s 18(2A)(a), (b) (as so added).

10 See unless he proves that he did not know that the matter in relation to which the contravention occurred was a contract or proposed contract or matter otherwise relating to the activities of the company or subsidiary concerned: see the Airports Act 1986 s 18(3) (as amended: see note 11).

11 See the Airports Act 1986 s 18(3) (amended in relation to England by SI 2001/2237; and amended in relation to Wales by SI 2002/808). As to the standard scale see PARA 50 note 8.

A prosecution for an offence under the Airports Act 1986 s 18 can only be instituted by or on behalf of the Director of Public Prosecutions: s 18(4). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

12 For the purposes of the Airports Act 1986 Pt II (12-28), a public airport company is an 'associated company' of a principal council if that council is its controlling authority or one of the constituent councils of a composite controlling authority: see s 16(3). See further PARA 185.

13 See the Airports Act 1986 s 19(1).

14 See the Airports Act 1986 s 19(2).

UPDATE

184 Public airport companies

TEXT AND NOTE 3--Airports Act 1986 s 13(2) amended: SI 2009/1941.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (1) PROVISION OF AERODROMES/(iii) Transfer to Public Companies/185. Controlling authority.

185. Controlling authority.

The 'controlling authority' of a public airport company¹ is the principal council² or principal councils of which the company is a subsidiary³; and a 'composite authority' is a controlling authority consisting of two or more principal councils, the councils concerned being referred to as the 'constituent councils' of that authority⁴.

It is the duty of the controlling authority to exercise its control over the company so as to ensure that at least three of its directors, or at least one quarter of their number (whichever is less), are suitably qualified full-time employees of the company, unless the Secretary of State⁵ has directed otherwise⁶. The controlling authority must also exercise its control so as to ensure that the company does not engage, or permit any of its subsidiaries to engage, in activities in which the controlling authority has no power to engage⁷. These duties are joint duties of all the constituent councils where the controlling authority is a composite authority⁸.

A principal council has power to enter into an agreement with any associated company⁹, or with any subsidiary of an associated company, for the provision by the council of any administrative, professional or technical services¹⁰.

A principal council may provide financial backing for the establishment and operation of any associated company by means of loans, guarantees or grants or even, on the winding up of the company, by meeting creditors' demands¹¹. In addition to its power to subscribe for shares when it forms a company¹² or to acquire shares or securities in consideration for any property, rights or liabilities which it may have transferred to a company¹³, a principal council may at any time subscribe for, take up or acquire any securities of any associated company¹⁴. A principal council has power to provide for the disposal, in such manner as it thinks fit, of any such securities¹⁵ and, in doing so, a principal council which is the controlling authority of a public airport company may provide for an employees' share scheme to be established in respect of the company¹⁶.

1 As to the meaning of 'public airport company' see PARA 184.

2 As to the meaning of 'principal council' see PARA 47 note 1.

3 Airports Act 1986 s 16(2)(a). See also *R v Bolton Borough Council, ex p Manchester City Council* (1991) 89 LGR 764; affd 89 LGR 1005, CA.

4 Airports Act 1986 s 16(2)(b).

5 As to the Secretary of State see PARA 33.

6 See the Airports Act 1986 s 17(1); and PARA 184. As to the directors of a public airport company see further PARA 184.

It is also the duty of the controlling authority to exercise its control over the company so as to ensure that the company appoints as auditors only persons who, in addition to meeting the requirements of the Companies Act 2006 Pt 42 (see **COMPANIES** vol 15 (2009) PARA 957 et seq), are approved for appointment as such auditors by (1) the Auditor General for Wales, in a case where the company's controlling authority is (a) a county council or county borough council in Wales; or (b) a composite authority of which both or all the constituent councils are county councils or county borough councils in Wales; or (2) in any other case, the Audit Commission for Local Authorities and the National Health Service in England: see the Airports Act 1986 ss 21, 22 (both amended by the Local Government and Housing Act 1989 s 194(2), Sch 12 Pt I; and the Airports Act 1986 s 22 further amended by SI 1991/1997; the Public Audit (Wales) Act 2004 s 66, Sch 2 para 7(1), (2); the Local Government and Public Involvement in Health Act 2007 ss 146(3), 241, Sch 9 para 1(1), (2)(e), Sch 18 Pt 9; and the

Companies Act 2006 (Consequential Amendments etc) Order 2008, SI 2008/948). As to the Audit Commission see **LOCAL GOVERNMENT** vol 69 (2009) PARA 744 et seq.

7 See the Airports Act 1986 s 17(4). In the case of a composite authority, s 17(4) applies as if it referred to activities in which none of the constituent councils has power to engage: see s 17(5).

Section 17(4) does not apply in relation to any activity which is a permitted activity in relation to the public airport company or the subsidiary by virtue of any regulations under s 17A: s 17(6) (added by the Civil Aviation Act 2006 s 5(1), (2)). The Secretary of State may by regulations provide for any activity specified in the regulations to be a 'permitted activity' in relation to a public airport company, or a subsidiary of a public airport company, for the purposes of the Airports Act 1986 s 17(6): s 17A(1) (s 17A added by the Civil Aviation Act 2006 s 5(3)). Any activity so specified must be an activity which appears to the Secretary of State to be incidental to, or connected with, carrying on the business of operating an airport as a commercial undertaking: s 17A(2) (as so added). For the purposes of s 17A 'activity' includes one that involves participating in, or making financial contributions towards, an activity carried on by, or jointly with, other persons; and 'airport' is not limited to one operated by a public airport company: s 17A(6) (as so added). Regulations under s 17A may provide for an activity to be a permitted activity only if it is carried on in such countries or territories as are specified in the regulations, and any conditions as are so specified are complied with: s 17A(3) (as so added). Such conditions may include, in particular, conditions requiring agreements relating to the provision of services in the carrying on of the activity to include provision for the payment of proper commercial charges in respect of those services: s 17A(4) (as so added). Regulations may be made so as to apply to (1) public airport companies or subsidiaries of such companies generally; (2) public airport companies of a particular description or subsidiaries of any such companies; (3) a particular public airport company; (4) subsidiaries, or a particular subsidiary, of a particular public airport company; and may make different provision for different cases: s 17A(5) (as so added). These provisions apply only in relation to public airport companies which are subsidiaries of controlling authorities in England or Wales, or subsidiaries of such companies: s 17A(7) (as so added).

8 See the Airports Act 1986 s 17(5).

9 As to the meaning of 'associated company' see PARA 184 note 12.

10 See the Airports Act 1986 s 24(1). The services rendered must be charged at proper commercial rates: see s 24(2). The accounts of the principal council must include a separate account for each contract with the company: see s 24(3). In relation to England, the Audit Commission Act 1988 s 14 (rights of inspection: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 769) applies to any such separate account as it does to any statement of accounts prepared by the council pursuant to regulations under s 27 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 628); Airports Act 1986 s 24(3)(a) (amended by the Audit Commission Act 1998 s 54(1), Sch 3 para 13; and the Public Audit (Wales) Act 2004 ss 66, 72, Sch 2 para 7(3), Sch 4). In relation to Wales, the Public Audit (Wales) Act 2004 s 29 (rights of inspection: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 813) applies in relation to any such separate account as it applies in relation to any statement of accounts prepared by the council pursuant to regulations under the Public Audit (Wales) Act 2004 s 39: Airports Act 1986 s 24(3)(aa) (added by the Public Audit (Wales) Act 2004 Sch 2 para 7(3)). As to the provision of facilities at an aerodrome see PARA 47.

11 See the Airports Act 1986 s 25(1), (3), (6), (7). The terms of any loan made in respect of the working capital or the assets of the company may not be any more favourable than the terms on which the council making the loan would itself be able to borrow at the time when the loan is made: see s 25(4). The council may guarantee the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, loans made in respect of working capital: see s 25(2). It may also give guarantees (1) when it disposes of some of its securities under s 20(2) (see the text and note 15) (see s 25(5) (a)); (2) when the company is disposing of the whole or any part of its undertaking, or of any property, rights or liabilities (see s 25(5)(b)); (3) when the company has incurred losses affecting the viability of its business (see s 25(6)); or (4) for the benefit of persons dealing or proposing to deal with the company while it is being wound up (see s 25(7)). It has been held that where a number of local authorities had shares in a public airport company, the company was a subsidiary of all the councils and, accordingly, all the councils had power to make loans to the company under the Airports Act 1986, regardless of the amount of shares which they held: *R v Bolton Borough Council, ex p Manchester City Council* (1991) 89 LGR 764; affd 89 LGR 1005, CA.

12 In pursuance of the Airports Act 1986 s 13: see PARA 183.

13 In under the Airports Act 1986 s 15(7): see PARA 183.

14 See the Airports Act 1986 s 20(1). Where a local authority is not a controlling authority of a public airport company, it may nonetheless acquire securities in that company, provided it has the consent of the Secretary of State: see s 20(3); and PARA 48. As to the meaning of 'local authority' see PARA 47 note 1. The provisions of s 20(1), (3) are without prejudice to the Civil Aviation Act 1982 s 30(1) (consent of the Secretary of State needed for a local authority to establish and maintain an aerodrome: see PARA 47): see the Airports Act 1986 s 20(4).

15 Airports Act 1986 s 20(2). The Airports Act 1986 provides for the avoidance of restrictions on the disposal by the holder of any security in a public airport company: see s 26. As to compensation for loss or diminution in pension rights see s 28.

16 See the Airports Act 1986 s 20(5). Any such scheme may provide for the transfer of shares without consideration: see s 20(5). For these purposes, 'employees' share scheme' means a scheme for encouraging or facilitating the holding of shares or debentures in a public airport company by or for the benefit of (1) the bona fide employees or former employees of the company or of one of its subsidiaries; or (2) the wives, husbands, widows, widowers, civil partners, surviving civil partners or children or step-children under the age of 18 of such employees or former employees: s 20(6) (amended by the Civil Partnership Act 2004 s 261(1), Sch 27 para 111).

UPDATE

185 Controlling authority

NOTE 15--Airports Act 1986 s 26 amended: SI 2009/1941.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(i) Acquisition of Land/186. Acquisition of land by the Secretary of State.

(2) ACQUISITION AND CONTROL OF LAND

(i) Acquisition of Land

186. Acquisition of land by the Secretary of State.

The Secretary of State¹ may, for any purpose connected with the discharge of his functions relating to civil aviation², acquire land by agreement or be authorised to acquire land compulsorily³. The Secretary of State may also authorise the Civil Aviation Authority ('CAA')⁴, air traffic services licence holders⁵ and relevant airport operators⁶ to acquire land compulsorily.

When a person grants or agrees to grant to the Secretary of State any right⁷ in or in relation to land in which the grantor has an interest, the grant or agreement is binding upon any person deriving title or otherwise claiming under the grantor to the same extent as it binds the grantor⁸. Where a right in or in relation to land has been so granted or has been agreed to be granted, it is a local land charge⁹.

1 As to the Secretary of State see PARA 33.

2 As to the Secretary of State's civil aviation functions see PARA 34 et seq.

3 Civil Aviation Act 1982 s 41(1). The Acquisition of Land Act 1981, save for Pt VI (ss 32, 33), has effect with respect to the compulsory purchase of land by the Secretary of State under this power: see the Civil Aviation Act 1982 s 41(2)(a). See **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556 et seq.

The Secretary of State has power to manage, sell, let or exchange land vested in him, although this does not affect the pre-emption right conferred on a person from whom land was acquired under the Defence of the Realm (Acquisition of Land) Act 1916 in the case of the subsequent sale of the land (see **WAR AND ARMED CONFLICT** vol 49(1) (2005 Reissue) PARA 520); Civil Aviation Act 1982 s 41(3). The Secretary of State may also manage and, subject to the terms of the lease, sublet any land which he has taken on lease or assign the lease: see s 41(4).

4 See PARA 187. As to the CAA see PARA 50 et seq.

5 See PARA 188. As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

6 See PARA 189. As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

7 Ie any right, for whatever period and whether capable of subsisting as a legal estate or not, in or in relation to land, including a right to enter on the land, a right to carry out and maintain works on the land, a right to install or maintain structures or apparatus on, under, over or across the land, and a right restrictive of the user of the land: see the Civil Aviation Act 1982 s 43(2). As to rights in or in relation to land see generally **REAL PROPERTY**. Any reference to the carrying out of works on land is to be construed as including a reference to the making of excavations on the land or to the carrying out of levelling operations on the land; and references to the maintenance of works or to interference with works are to be construed accordingly: s 104(2).

8 See the Airports Act 1986 s 43(1)(a) (amended by the Transport Act 2000 s 274, Sch 31 Pt I(4)). This applies notwithstanding that the grant or agreement would not have been binding under the ordinary rules of law: see the Civil Aviation Act 1982 s 43(1).

9 See the Civil Aviation Act 1982 s 55(1)(a). This provision applies to any grant or agreement to grant dated on or after 25 October 1968: see s 55(1)(a). As to local land charges see **LAND CHARGES**. As to registration of local land charges see the Local Land Charges Act 1975; the Local Land Charges Rules 1977, SI 1977/985; and

LAND CHARGES. Failure to register does not affect the enforceability of the charge but a purchaser may be entitled to compensation: see the Local Land Charges Act 1975 s 10; and **LAND CHARGES.**

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(i) Acquisition of Land/187. Acquisition of land by the Civil Aviation Authority.

187. Acquisition of land by the Civil Aviation Authority.

At the time of the creation of the Civil Aviation Authority ('CAA')¹, property in a certain number of aerodromes and other undertakings² was vested in the CAA, together with the rights and liabilities that this vesting implied³. The CAA may, with the authorisation of the Secretary of State⁴ and for any purposes connected with the performance of its functions, acquire land compulsorily⁵. It may also acquire land by agreement⁶. Any land vested in the CAA⁷ is deemed for all purposes to have been acquired by the CAA for the purposes of its undertakings⁸.

When a person grants or agrees to grant to the CAA any right⁹ in or in relation to land in which the grantor has an interest, the grant or agreement is binding upon any person deriving title or otherwise claiming under the grantor to the same extent as it binds the grantor¹⁰. Where a right in or in relation to land has been so granted or has been agreed to be granted, it is a local land charge¹¹.

1 As to the CAA see PARA 50 et seq.

2 I.e. the aerodromes at Aberdeen, Benbecula, Inverness, Islay (Port Ellen), Kirkwall, Stornoway, Sumburgh, Tiree and Wick (see the Civil Aviation Act 1971 s 14(1), Sch 2 para 1(1)(a) (repealed)), and the National Air Traffic Services, the Civil Aviation Flying Unit, the Fire Service Training School at Stansted, the Secretary of State's medical unit at Heathrow, and the unit of the Directorate of Operational Research and Analysis at Heathrow (see Sch 2 para 1(1)(b) (repealed)). The eight Scottish aerodromes were transferred to a wholly owned subsidiary of the CAA, Highlands and Islands Airports Limited, on 1 April 1986, following the recommendations set out in the White Paper *Airports Policy* (Cmnd 9542) (1985).

3 See the Civil Aviation Act 1971 Sch 2 (repealed). The vesting date was 1 April 1972: Civil Aviation Authority (Vesting Date) (No 1) Order 1972, SI 1972/140. As to matters arising out of the transfer to the CAA of aerodromes and other undertakings following the repeal of the Civil Aviation Act 1971 see the Civil Aviation Act 1982 s 22, Sch 3 (amended by the Capital Allowances Act 1990 s 164, Sch 2; and the Employment Rights Act 1996 s 242, Sch 3 Pt I).

4 As to the Secretary of State see PARA 33.

5 See the Civil Aviation Act 1982 s 42(1). The Acquisition of Land Act 1981, other than Pt VI (ss 32, 33), applies in relation to the compulsory purchase of land by the CAA: see the Civil Aviation Act 1982 s 42(1). See **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556 et seq.

6 The provisions of the Compulsory Purchase Act 1965 Pt I (ss 1-32) (so far as applicable), other than ss 4-8 and s 31, apply where the CAA acquires land by agreement: see the Civil Aviation Act 1982 s 42(4). See **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556 et seq.

7 I.e. by virtue of the Civil Aviation Act 1982 s 42.

8 Civil Aviation Act 1982 s 42(5).

9 See PARA 186 note 7.

10 See the Civil Aviation Act 1982 s 43(1)(b). This applies notwithstanding that the grant or agreement would not have been binding under the ordinary rules of law: see s 43(1).

11 See Civil Aviation Act 1982 s 55(1)(a). This provision applies to any grant or agreement to grant dated on or after 25 October 1968: see s 55(1)(a). As to local land charges see **LAND CHARGES**. As to registration of local land charges see the Local Land Charges Act 1975; the Local Land Charges Rules 1977, SI 1977/985; and **LAND CHARGES**. Failure to register does not affect the enforceability of the charge but a purchaser may be entitled to compensation: see the Local Land Charges Act 1975 s 10; and **LAND CHARGES**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(i) Acquisition of Land/188. Acquisition of land by an air traffic services licence holder.

188. Acquisition of land by an air traffic services licence holder.

An air traffic services licence holder¹ may be authorised by the Secretary of State² to acquire land compulsorily for any purpose connected with the carrying out of the activities authorised by the licence³. The Secretary of State may not grant such an authorisation to a licence holder in respect of land which is owned by another licence holder who is using it or who will, in the opinion of the Secretary of State, use it at some time in the period of five years beginning with the date on which he receives the request for the authorisation⁴. Any land vested in the licence holder by virtue of the provisions described above is deemed for all purposes to have been acquired in connection with the carrying out of the activities authorised by the licence⁵.

When a person grants or agrees to grant to a licence holder any right⁶ in or in relation to land in which the grantor has an interest, the grant or agreement is binding upon any person deriving title or otherwise claiming under the grantor to the same extent as it binds the grantor⁷. Where a right in or in relation to land has been so granted or has been agreed to be granted, it is a local land charge⁸.

1 'Licence holder' means a person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (see PARA 139 et seq); Civil Aviation Act 1982 s 105(1) (definition added by the Transport Act 2000 s 36, Sch 4 paras 1, 14). As to the licensing of air traffic services see PARA 139 et seq.

2 As to the Secretary of State see PARA 33.

3 Civil Aviation Act 1982 s 42A(1) (s 42A added by the Transport Act 2000 Sch 4 paras 1, 2). As to licences for air traffic services, and the activities which may be authorised by such licences, see PARA 139 et seq. The Acquisition of Land Act 1981, other than Pt VI (ss 32, 33), applies in relation to the compulsory purchase of land by a licence holder: see the Civil Aviation Act 1982 s 42(1); applied by s 42A(5) (as so added). See **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556 et seq.

4 Civil Aviation Act 1982 s 42A(3) (as added: see note 3). A reference in s 42A(3) (as so added) to use of land by a licence holder is a reference to use for a purpose connected with the carrying out of the activities authorised by the licence: s 42A(4) (as so added).

5 Civil Aviation Act 1982 s 42(5); applied by s 42A(5) (as added: see note 3).

6 See PARA 186 note 7.

7 See the Civil Aviation Act 1986 s 43(1)(c) (amended by the Transport Act 2000 Sch 4 paras 1, 3). This applies notwithstanding that the grant or agreement would not have been binding under the ordinary rules of law: see the Civil Aviation Act 1982 s 43(1).

8 See the Civil Aviation Act 1982 s 55(1)(a). This provision applies to any grant or agreement to grant dated on or after 25 October 1968: see s 55(1)(a). As to local land charges see **LAND CHARGES**. As to registration of local land charges see the Local Land Charges Act 1975; the Local Land Charges Rules 1977, SI 1977/985; and **LAND CHARGES**. Failure to register does not affect the enforceability of the charge but a purchaser may be entitled to compensation: see the Local Land Charges Act 1975 s 10; and **LAND CHARGES**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(i) Acquisition of Land/189. Acquisition of land by an airport operator.

189. Acquisition of land by an airport operator.

A relevant airport operator¹ may be authorised by the Secretary of State² to acquire land compulsorily for any purpose connected with the performance of the operator's functions as such³. A relevant airport operator may also acquire land by agreement⁴.

A relevant airport operator may not, within 25 years of the date of acquisition, dispose of any land⁵ acquired compulsorily⁶ if it forms part of an airport or is attached to an airport and is administered with the airport as a single unit, or if it has, at any time since its acquisition, formed part of an airport or been so attached and administered⁷. However, exception is made where (1) the disposal is for the purposes of the provision of any of the services or facilities associated with the operation of an airport⁸; (2) the disposal is of a leasehold interest in the land for a term of less than seven years⁹; or (3) the Secretary of State consents to the disposal¹⁰.

1 For the purposes of the Airports Act 1986 Pt V (ss 57-62) (which deals with the status of certain airport operators as statutory undertakers), the 'relevant airport operator' is the airport operator in the case of an airport to which Pt V applies: s 57(4). As to the meaning of 'airport operator' see PARA 183 note 4. As to statutory undertakers generally see PARA 216. The airports to which Pt V applies are:

- 8 (1) any airport in respect of which a permission to levy airport charges is in force under Pt IV (ss 36-56) (see PARA 228 et seq), or in respect of which there subsists a pending application for such a permission made in accordance with s 38 (see PARA 229), other than an airport (a) owned by BAA plc (formerly the British Airports Authority); or (b) owned by a principal council or by a metropolitan county passenger transport authority or jointly owned by two or more principal councils or by such an authority and one or more such councils (s 57(1)(a), (2));
- 9 (2) any airport which is owned or managed by any subsidiary of the Civil Aviation Authority ('CAA') (s 57(1)(b)).

As to the transfer of undertakings of the British Airports Authority to BAA plc see PARA 182. As to the meaning of 'principal council' see PARA 47 note 1. As to metropolitan county passenger transport authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARA 49. As to the CAA see PARA 50 et seq.

2 As to the Secretary of State see PARA 33.

3 See the Airports Act 1986 s 59(1). The Acquisition of Land Act 1981, except for Pt VI (ss 32, 33) applies to the compulsory purchase of land by an airport operator under this power: see the Airports Act 1986 s 59(1)(a). See **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556 et seq.

4 The provisions of the Compulsory Purchase Act 1965 Pt I (ss 1-32) (so far as applicable), other than ss 4-8 and s 31, apply where an airport operator acquires land by agreement: see the Airports Act 1986 s 59(2)(a). See **COMPULSORY ACQUISITION OF LAND**.

5 Or any interest or right in or over the land: see the Civil Aviation Act 1982 s 60(2).

6 le by the airport operator or any predecessor in title: see the Civil Aviation Act 1982 s 60(1).

7 See the Civil Aviation Act 1982 s 60(1), (2).

8 Civil Aviation Act 1982 s 60(2)(a).

9 Civil Aviation Act 1982 s 60(2)(b).

10 Civil Aviation Act 1982 s 60(2)(c). Any such consent may be given subject to such conditions as the Secretary of State thinks fit: s 60(3).

UPDATE

189 Acquisition of land by an airport operator

NOTE 1--Head (1). Airports Act 1986 s 57(2) amended: Local Transport Act 2008 Sch 4 para 54(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(i) Acquisition of Land/190. Compensation in respect of planning decisions.

190. Compensation in respect of planning decisions.

A local planning authority¹ is entitled to recover a sum equal to the compensation payable where it is liable to pay compensation² and where the liability is attributable to certain planning decisions³.

Thus a local planning authority may recover such a sum from the Civil Aviation Authority ('CAA')⁴ where compensation is payable in relation to a planning decision which would not have been made but for the need to secure the safe and efficient operation of an aerodrome owned by the CAA or the need to prevent persons or buildings from being struck by aircraft using such an aerodrome⁵. A local planning authority may recover such a sum from an air traffic services licence holder⁶ where compensation is payable in relation to a planning decision which would not have been made but for the need to secure the safe and efficient operation of apparatus which is in the possession of a licence holder and which is provided for the purpose of the activities authorised by the licence⁷. A local planning authority may recover such a sum from a relevant airport operator⁸ where compensation is payable in relation to a planning decision which would not have been made but for the need to secure the safe and efficient operation of the airport, the need to prevent persons or buildings from being struck by aircraft using the airport, or the need to secure the safe and efficient operation of apparatus which is owned by the airport operator and provided for the purpose of assisting air traffic control or as an aid to air navigation⁹.

Where a purchase notice is served¹⁰ in respect of such a planning decision, any local authority deemed¹¹ to have served a notice to treat in respect of the interest to which the purchase notice relates may by notice¹² require the CAA, the licence holder or the airport operator (as the case may be) to purchase the interest from the local authority¹³.

Any dispute as to whether a planning decision would not have been made but for such a need as is mentioned above must be referred to and determined by the Secretary of State¹⁴.

1 For these purposes, references to a local planning authority include references to any authority to which the functions of a local planning authority are delegated: Civil Aviation Act 1982 s 53(6); Airports Act 1986 s 61(6). See generally **TOWN AND COUNTRY PLANNING**. As to the meaning of 'local authority' see PARA 47 note 1.

2 Ie under the Town and Country Planning Act 1990 s 107, 108, 144(2) or s 279(1). Reference was also made to compensation under s 114, but this provision has been repealed by the Planning and Compensation Act 1991 in relation to applications for planning permission made on or after 16 November 1990.

3 See the Civil Aviation Act 1982 s 53(1) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 55; the Planning and Compensation Act 1991 ss 31, 60, 84, Sch 6 para 6, Sch 12 para 34, Sch 19 Pts II, IV; and the Transport Act 2000 s 36, Sch 4 paras 1, 11); and the Airports Act 1986 s 61(1) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 73; and the Planning and Compensation Act 1991 Sch 6 para 7, Sch 12 para 35, Sch 19 Pts II, IV). See also the text and notes 4-14. For these purposes, 'planning decision' means a decision made on an application under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (see **TOWN AND COUNTRY PLANNING**): Civil Aviation Act 1982 s 53(6) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 55); Airports Act 1986 s 61(6) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 73).

4 As to the CAA see PARA 50 et seq.

5 See the Civil Aviation Act 1982 s 53(1), (10)(a) (s 53(1) as amended (see note 3); and s 53(10) added by the Transport Act 2000 Sch 4 paras 1, 11). As to the meaning of 'aerodrome' see PARA 175.

Where such a sum is recovered, any amount received by the planning authority in respect of compensation under the Town and Country Planning Act 1990 ss 111, 112 (both as amended) (recovery of compensation on subsequent development: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 918) must be refunded to the CAA: see the Civil Aviation Act 1982 s 53(2) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 55; and the Transport Act 2000 Sch 4 para 11).

6 As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

7 See the Civil Aviation Act 1982 s 53(1), (10)(b) (s 53(1) as amended (see note 3); and s 53(10) as added (see note 5)). Where such a sum is recovered, any amount received by the planning authority in respect of compensation under the Town and Country Planning Act 1990 ss 111, 112 (recovery of compensation on subsequent development: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 918) must be refunded to the licence holder: see the Civil Aviation Act 1982 s 53(2) (as amended: see note 5).

8 As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

9 See the Airports Act 1986 s 61(1) (as amended: see note 3). Where such a sum is recovered, any amount received by the planning authority in respect of compensation under the Town and Country Planning Act 1990 ss 111, 112 (recovery of compensation on subsequent development: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 918) must be repaid to the airport operator: see the Airports Act 1986 s 61(2) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 73).

10 Ie under the Town and Country Planning Act 1990 s 137: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 966.

11 Ie under the Town and Country Planning Act 1990 s 139(3) or s 143(1): see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARAS 970, 974.

12 Ie notice in writing given not later than one month from the time when the amount of compensation payable by the local authority for the interest is agreed or determined: see the Civil Aviation Act 1982 s 53(3); and the Airports Act 1986 s 61(3) (both as amended: see note 13).

13 Civil Aviation Act 1982 s 53(3) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 55; and the Transport Act 2000 Sch 4 para 11); Airports Act 1986 s 61(3) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 73). In such a case, the purchase price is a sum equal to the amount of compensation agreed or determined: see the Civil Aviation Act 1982 s 53(3) (as so amended); and the Airports Act 1986 s 61(3) (as so amended). Where a notice is given under the Civil Aviation Act 1982 s 53(3) or the Airports Act 1986 s 61(3), the CAA, the licence holder or the airport operator (as the case may be) is deemed, subject to any agreement made with the local authority, to have contracted with the local authority to purchase the interest at that price: see the Civil Aviation Act 1982 s 53(4) (amended by the Transport Act 2000 Sch 4 para 11); and the Airports Act 1986 s 61(4).

14 Civil Aviation Act 1982 s 53(5) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 55); Airports Act 1986 s 61(5) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 73). As to the Secretary of State see PARA 33.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(ii) Acquisition of Rights over Land/191. Power to create rights over land.

(ii) Acquisition of Rights over Land

191. Power to create rights over land.

The Secretary of State¹ may make an order creating easements over land, or other rights² in respect of land, where he is satisfied that it is expedient to do so³ in order to secure (1) the safe and efficient use for civil aviation purposes⁴ of any land which is vested in the Secretary of State, Eurocontrol⁵, the Civil Aviation Authority ('CAA')⁶, an air traffic services licence holder⁷ or a relevant airport operator⁸, or which any of them proposes to acquire⁹; or (2) the provision of any services required in relation to such land¹⁰; or (3) that civil aircraft may be navigated with safety and efficiency¹¹. Orders falling within head (1) or head (2) above may provide for the creation of rights in favour of the authority or person in question or, where that authority is Eurocontrol, either of Eurocontrol or of the Secretary of State¹²; and orders falling within head (3) above may provide for the creation of rights in favour of the Secretary of State¹³.

1 As to the Secretary of State see PARA 33.

2 Such rights include rights to carry out and maintain works on any land and to install and maintain structures and apparatus on, under, over or across any land. See further PARA 186 note 7.

3 See the Civil Aviation Act 1982 s 44(1), (2). As to the procedure for making such orders see PARA 195.

4 See PARA 36 note 3.

5 As to Eurocontrol see PARA 23.

6 As to the CAA see PARA 50 et seq.

7 As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

8 As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

9 Civil Aviation Act 1982 s 44(1)(a), (12). Section 44 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4).

10 Civil Aviation Act 1982 s 44(1)(b).

11 Civil Aviation Act 1982 s 44(1)(c).

12 Civil Aviation Act 1982 s 44(2)(a).

13 Civil Aviation Act 1982 s 44(2)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(ii) Acquisition of Rights over Land/192. Entry on land.

192. Entry on land.

An order creating rights in relation to land¹ may contain such consequential, incidental and supplemental provisions as appear to the Secretary of State² to be necessary or expedient for the purposes of the order³, including provisions for authorising persons to enter on land for the purpose of carrying out, installing, maintaining or removing any works, structures or apparatus⁴.

Entry may not be made in pursuance of such an order unless notice is served on the occupier of the land not less than seven days before the entry is made, stating that an entry will be made upon the land in exercise of powers conferred by the order, and specifying the purpose for which the entry will be made⁵. Entry may, however, be made without notice in case of emergency or for the purpose of performing any functions required from time to time in connection with the maintenance or use of any works, structures or apparatus⁶.

If any land is damaged in the exercise of a power of entry conferred by such an order, such compensation must be paid to the persons interested in the land as may be just⁷.

1 As to the power to make an order creating such rights see PARA 191.

2 As to the Secretary of State see PARA 33.

3 As to the purposes of an order under the Civil Aviation Act 1982 s 44 see PARA 191.

4 Civil Aviation Act 1982 s 44(3). See also PARA 191 note 2. Obstruction is an offence: see PARA 194.

As to provisions relating to electronic communications apparatus see the Airports Act 1986 s 62 (amended by the New Roads and Street Works Act 1991 s 168, Sch 8 para 118; and the Communications Act 2003 s 406(1), (7), Sch 17 para 80, Sch 19). As to electronic communications apparatus generally see **TELECOMMUNICATIONS** vol 97 (2010) PARA 192 et seq.

5 See the Civil Aviation Act 1982 s 44(4). As to service of notices see PARA 224.

6 See the Civil Aviation Act 1982 s 44(5).

7 See the Civil Aviation Act 1982 s 44(6) (amended by the Transport Act 2000 ss 36, 274, Sch 4 paras 1, 4, Sch 31 Pt I(4)). If the order was made in favour of the Secretary of State or Eurocontrol, the compensation must be paid by the Secretary of State; and if the order was made in favour of the Civil Aviation Authority ('CAA'), an air traffic services licence holder or a relevant airport operator, then that authority or person, as the case may be, must pay the compensation: see the Civil Aviation Act 1982 s 44(6) (as so amended). Section 44 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4). As to the CAA see PARA 50 et seq. As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1. As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq. As to Eurocontrol see PARA 23.

Any dispute as to whether compensation is payable, or as to its amount, or as to the person to whom it is payable, must be referred to and determined by the Lands Tribunal: see the Civil Aviation Act 1982 s 44(6). As to the Lands Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720.

UPDATE

192 Entry on land

NOTE 7--Reference to the Lands Tribunal is now to the Upper Tribunal: Civil Aviation Act 1982 s 44(6) (amended by SI 2009/1307).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(ii) Acquisition of Rights over Land/193. Ownership of and interference with structures, works, etc.

193. Ownership of and interference with structures, works, etc.

The ownership of anything is not affected by reason only that it is placed on or under, or affixed to, any land in pursuance of an order creating rights in relation to land¹.

So long as any such order is in force, no person may, except with the necessary consent, wilfully interfere with any works carried out on any land in pursuance of the order, or with anything installed on, under, over or across any land in pursuance of the order². If the order is made in favour of the Secretary of State³ or Eurocontrol⁴, the necessary consent is the consent of the Secretary of State⁵; if the order is made in favour of the Civil Aviation Authority ('CAA')⁶, the necessary consent is the consent of the Secretary of State or the CAA⁷; if the order is made in favour of a relevant airport operator⁸, the necessary consent is the consent of the Secretary of State or the relevant airport operator⁹; and if the order is made in favour of an air traffic services licence holder¹⁰, the necessary consent is the consent of the licence holder¹¹.

1 Civil Aviation Act 1982 s 44(7) (substituted by the Transport Act 2000 s 36, Sch 4 paras 1, 4). As to the power to make an order creating such rights see PARA 191.

2 Civil Aviation Act 1982 s 44(7A) (s 44(7A), (7B) added by the Transport Act 2000 Sch 4 para 4). Contravention of this provision is an offence: see PARA 194.

3 As to the Secretary of State see PARA 33.

4 As to Eurocontrol see PARA 23.

5 Civil Aviation Act 1982 s 44(7B)(a) (as added: see note 2).

6 As to the CAA see PARA 50 et seq.

7 Civil Aviation Act 1982 s 44(7B)(b) (as added: see note 2).

8 As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

9 The Civil Aviation Act 1982 s 44 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4).

10 As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

11 Civil Aviation Act 1982 s 44(7B)(c) (as added: see note 2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(ii) Acquisition of Rights over Land/194. Offences.

194. Offences.

Every person who wilfully obstructs any person in the exercise of any power of entry¹ conferred by an order creating rights in relation to land² is liable on summary conviction to a fine not exceeding level 3 on the standard scale³. An offence of wilful interference⁴ is punishable on summary conviction by imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale or both⁵.

1 As to the power to enter on land see PARA 192.

2 As to the power to make an order creating such rights see PARA 191.

3 Civil Aviation Act 1982 s 44(10) (amended by virtue of the Criminal Justice Act 1982 ss 37, 38, 46). As to the standard scale see PARA 50 note 8. As to offences by bodies corporate see the Civil Aviation Act 1982 s 99 (amended by the Airports Act 1986 s 83(5), Sch 6 Pt II).

As to who may institute proceedings for an offence under the Civil Aviation Act 1982 s 44 see s 44(11).

4 See PARA 193.

5 See the Civil Aviation Act 1982 s 44(10) (as amended (see note 3); further amended by SI 2004/1755). See also note 3. As from a day to be appointed, the Civil Aviation Act 1982 s 44(10) is further amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 30(1), (2), to increase the term of imprisonment from three months to 51 weeks. At the date at which this volume states the law, no such day had been appointed.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(ii) Acquisition of Rights over Land/195. Procedure for making orders.

195. Procedure for making orders.

The procedure for making an order creating rights in relation to land¹ is strictly regulated². Before making the order, the Secretary of State³ must, unless the order is to be made on the application of the Civil Aviation Authority ('CAA')⁴, a relevant airport operator⁵ or an air traffic services licence holder⁶:

- 152 (1) publish in one or more newspapers circulating in the locality in which the land is situated⁷; and
- 153 (2) serve on every owner, lessee and occupier of any of the land and upon every local authority⁸ within whose area any of the land is situated⁹,

a notice stating that the Secretary of State proposes to make the order and its effect, and specifying the time within which, and the manner in which, objections to the making of the order may be made¹⁰. Where the CAA, a relevant airport operator or a licence holder is making an application for an order, that authority or person must, before making the application, similarly publish and serve a notice of the proposed application¹¹. If no objection is duly made, or if all objections are withdrawn, the Secretary of State may make the order¹². If any objection duly made is not withdrawn, the Secretary of State must, before making the order, either cause a public local inquiry to be held or afford any person who has made such an objection an opportunity of being heard by a person whom he has appointed for the purpose¹³. After considering the objection and the report of the person who held the inquiry or before whom the hearing was held, the Secretary of State may, if he thinks fit, make the order¹⁴. However, if he is satisfied that an objection relates solely to matters which can be dealt with by the tribunal assessing compensation, the Secretary of State may disregard it in considering whether to make the order¹⁵.

Immediately after an order has been made, a notice must be published in one or more newspapers circulating in the district in which the land is situated, stating that the order has been made, and naming a place where a copy of it may be seen at all reasonable hours¹⁶. A similar notice must be served on every person who, having duly objected to the order, has not withdrawn his objection¹⁷.

Unless there is an appeal¹⁸, the order becomes operative six weeks after the date on which the notice of its making is first published¹⁹.

1 As to the power to make an order creating such rights see PARA 191.

2 See the Civil Aviation Act 1982 s 44(8), Sch 7.

3 As to the Secretary of State see PARA 33.

4 As to the CAA see PARA 50 et seq.

5 The Civil Aviation Act 1982 Sch 7 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4). As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

6 As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

7 Civil Aviation Act 1982 Sch 7 para 1(1)(a) (Sch 7 para 1 amended by the Transport Act 2000 s 36, Sch 4 paras 1, 16).

8 As to the meaning of 'local authority' see PARA 47 note 1.

9 Civil Aviation Act 1982 Sch 7 para 1(1)(b) (as amended: see note 7). As to service of notices see PARA 224.

10 Civil Aviation Act 1982 Sch 7 para 1(1) (as amended: see note 7). The time specified for the making of objections must be not less than 28 days from the service of the notice: see Sch 7 para 1(1) (as so amended).

11 See the Civil Aviation Act 1982 Sch 7 para 1(2) (as amended: see note 7). The time specified for the making of objections must be not less than 42 days from the service of the notice: see Sch 7 para 1(2) (as so amended).

12 Civil Aviation Act 1982 Sch 7 para 2.

13 Civil Aviation Act 1982 Sch 7 para 3.

14 Civil Aviation Act 1982 Sch 7 para 3.

15 See the Civil Aviation Act 1982 Sch 7 para 4.

16 See the Civil Aviation Act 1982 Sch 7 para 5(1). Where the order is made in favour of the CAA, a relevant airport operator, or a licence holder, the notice must be given by that authority or person, as the case may be; and, in any other case, it must be given by the Secretary of State: see Sch 7 para 5(2) (amended by the Transport Act 2000 s 274, Sch 4 para 16, Sch 31 Pt I(4)). As to the registration of orders as local land charges see PARA 223.

17 See the Civil Aviation Act 1982 Sch 7 para 5(1). See also note 16.

18 See the Civil Aviation Act 1982 Sch 7 para 7; and PARA 196.

19 See the Civil Aviation Act 1982 Sch 7 para 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(ii) Acquisition of Rights over Land/196. Questioning validity of orders.

196. Questioning validity of orders.

An order creating rights in relation to land¹ may not be questioned, whether before or after it has been made, in any legal proceedings² except on the ground that the order or any provision in it is not within the powers of the Secretary of State³, or that some statutory requirement⁴ in relation to the making of the order has not been complied with⁵. In either of these cases a person aggrieved by the order may, within six weeks of the first publication of notice that the order has been made⁶, apply to the High Court⁷.

The court may suspend the operation of the order, or of any provision contained in it, until the final determination of the proceedings⁸. If the court is satisfied that the order or any provision in it is not within the Secretary of State's powers, or that the applicant's interests have been substantially prejudiced by non-compliance with any statutory requirement, it may quash the order or any provision in it either generally or in so far as it affects the applicant⁹.

Unless the order is quashed or suspension is granted, the order becomes operative six weeks after notice of its making is first published¹⁰.

1 As to the power to make an order creating such rights see PARA 191.

2 See the Civil Aviation Act 1982 s 44(8), Sch 7 para 8.

3 As to the Secretary of State see PARA 33.

4 See PARA 195.

5 See the Civil Aviation Act 1982 Sch 7 para 7.

6 As to the requirement for publication of such a notice see PARA 195.

7 See the Civil Aviation Act 1982 Sch 7 para 7.

8 Civil Aviation Act 1982 Sch 7 para 7(a).

9 Civil Aviation Act 1982 Sch 7 para 7(b).

10 See the Civil Aviation Act 1982 Sch 7 para 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(ii) Acquisition of Rights over Land/197. Compensation.

197. Compensation.

Any person having an interest in land the value of which is diminished in consequence of the coming into operation of an order creating rights in relation to land¹ is entitled to recover compensation for the diminution².

If an interest in land is subject to a mortgage³, compensation is assessed as if the interest were not so subject⁴, although a mortgagee is entitled to claim compensation⁵; the compensation payable for the interest in land is paid to such of the claimants as the Secretary of State thinks proper, and must be applied by that claimant in such manner as the parties interested agree, or, if they do not agree, as is determined by arbitration⁶.

1 As to the power to make an order creating such rights see PARA 191.

2 Civil Aviation Act 1982 s 44(8), Sch 7 para 10(1). Where the order is made in favour of the Civil Aviation Authority ('CAA'), a relevant airport operator, or an air traffic services licence holder, the compensation is payable by that authority or person, as the case may be; and, in any other case, it is payable by the Secretary of State: see Sch 7 para 5(2) (amended by the Transport Act 2000 ss 36, 274, Sch 4 paras 1, 16, Sch 31 Pt I(4)); applied by the Civil Aviation Act 1982 Sch 7 para 10(2). Schedule 7 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4). As to the CAA see PARA 50 et seq. As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1. As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq. As to the Secretary of State see PARA 33.

The Land Compensation Act 1961 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 715 et seq) applies to the recovery of the compensation: see the Civil Aviation Act 1982 Sch 7 para 10(1).

3 For these purposes, 'mortgage' includes an equitable charge or other incumbrance: see the Civil Aviation Act 1982 Sch 7 para 11(2). As to mortgages generally see **MORTGAGE**.

4 See the Civil Aviation Act 1982 Sch 7 para 11(1)(a).

5 A compensation claim may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest: Civil Aviation Act 1982 Sch 7 para 11(1)(b). A mortgagee is not entitled to claim compensation in respect of his interest as such: Sch 7 para 11(1)(c).

6 Civil Aviation Act 1982 Sch 7 para 11(1)(d).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(ii) Acquisition of Rights over Land/198. Land held by statutory undertakers.

198. Land held by statutory undertakers.

Where an order creating rights in relation to land¹ provides for the creation of an easement over, or of any other right in or in relation to, land held by a statutory undertaker² for the purposes of the carrying on of his undertaking, and where the Secretary of State³, upon a representation made to him within the time during which an objection to the making of the order may be made⁴, is satisfied that the easement or right could not be enjoyed without serious detriment to the carrying on of the undertaking, and certifies to that effect, the order is subject to special parliamentary procedure⁵.

Special provisions apply to the recovery of compensation by statutory undertakers where any such order has been made⁶.

1 As to the power to make an order creating such rights see PARA 191.

2 As to statutory undertakers see PARA 216.

3 As to the Secretary of State see PARA 33.

4 As to the requirement for such a notice see PARA 195.

5 Civil Aviation Act 1982 s 44(9). The provisions of the Statutory Orders (Special Procedure) Act 1945 thus become applicable: see s 1(1); and the Civil Aviation Act 1982 s 44(8), Sch 7 para 9. As to special parliamentary procedure see **PARLIAMENT** vol 34 (Reissue) PARA 912 et seq.

6 See the Civil Aviation Act 1982 Sch 7 para 12(1). As to the application of special compensation provisions to statutory undertakers see PARA 217. As to the assessment of compensation see PARA 218. Compensation is recoverable (1) from the Secretary of State in the case of an order made otherwise than in favour of the Civil Aviation Authority ('CAA'), a relevant airport operator or an air traffic services licence holder; (2) from the CAA in the case of an order made in favour of the CAA; (3) from the relevant airport operator in the case of an order made in favour of a relevant airport operator; (4) from the licence holder in the case of an order made in favour of an air traffic services licence holder: Sch 7 para 12(2) (amended by the Transport Act 2000 s 36, Sch 4 paras 1, 16). The Civil Aviation Act 1982 Sch 7 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4). As to the CAA see PARA 50 et seq. As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1. As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(iii) Power to Exercise Control over Land/199. Power to control land by directions.

(iii) Power to Exercise Control over Land

199. Power to control land by directions.

If the Secretary of State¹ is satisfied that it is necessary to do so in order to secure the safe and efficient use for civil aviation purposes² of any land, structures, works or apparatus which is vested in the Secretary of State, Eurocontrol³, the Civil Aviation Authority ('CAA')⁴, a relevant airport operator⁵, the licensee of any aerodrome licensed under an air navigation order⁶ or an air traffic services licence holder⁷, or which such an authority or person proposes to acquire or install, he may declare by order⁸ that any land specified in the order is to be subject to control by directions⁹.

Such an order may contain any consequential, incidental or supplemental provisions which appear to the Secretary of State to be necessary or expedient for the purposes of the order, including, in particular, provisions for empowering persons authorised by him to remove, pull down, cut down or alter so as to bring into conformity with the requirements of any directions given under the order, any building, structure, tree or apparatus which contravenes those requirements¹⁰.

1 As to the Secretary of State see PARA 33.

2 See PARA 36 note 3. For the purposes of the Civil Aviation Act 1982 s 46, 'civil aviation purposes' includes the testing of aircraft designed for civil aviation: see s 46(1).

3 As to Eurocontrol see PARA 23.

4 As to the CAA see PARA 50 et seq.

5 As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

6 As to the licensing of aerodromes see PARAS 226-227. As to air navigation orders see PARA 353 et seq.

7 As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

8 As to the making of such orders see PARA 200.

9 See the Civil Aviation Act 1982 s 46(1), (10) (s 46(10) amended by the Transport Act 2000 ss 36, 274, Sch 4 paras 1, 5, Sch 31 Pt I(4)). The Civil Aviation Act 1982 s 46 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4).

The powers of the Secretary of State under the Civil Aviation Act 1982 s 46 do not prejudice his power to acquire land for the purpose of securing the observance of any requirement or restriction which might have been imposed in relation to land under s 46: s 46(8). As to the Secretary of State's power to acquire land see PARA 186.

10 Civil Aviation Act 1982 s 46(3). As to provisions relating to electronic communications apparatus see the Airports Act 1986 s 62 (amended by the New Roads and Street Works Act 1991 s 168, Sch 8 para 118; and the Communications Act 2003 s 406(1), (7), Sch 17 para 80, Sch 19). As to electronic communications apparatus generally see **TELECOMMUNICATIONS** vol 97 (2010) PARA 192 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(iii) Power to Exercise Control over Land/200. Procedure for making orders.

200. Procedure for making orders.

An order subjecting land to control by directions¹ is subject to special parliamentary procedure². Before making an order, the Secretary of State³ must consult every local authority⁴ within whose area the whole or any part of the land to which the proposed order will relate is situated⁵, in addition to complying with the other preliminary requirements as to notices, objections and local inquiries which the application of special parliamentary procedure involves⁶.

1 As to the power to make such an order see PARA 199.

2 Civil Aviation Act 1982 s 46(4). As to special parliamentary procedure see **PARLIAMENT** vol 34 (Reissue) PARA 912 et seq.

3 As to the Secretary of State see PARA 33.

4 As to the meaning of 'local authority' see PARA 47 note 1.

5 Civil Aviation Act 1982 s 46(5).

6 See the Civil Aviation Act 1982 s 46(6). As to the preliminary requirements see the Statutory Orders (Special Procedure) Act 1945 s 2, Sch 1; and **PARLIAMENT** vol 34 (Reissue) PARA 915. As to the registration of such orders as local land charges see PARA 223.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(iii) Power to Exercise Control over Land/201. Directions in relation to land.

201. Directions in relation to land.

Where an order is in force subjecting land to control by directions¹, the Secretary of State² may, in pursuance of any general or special authority given by the order, give directions (1) for requiring the total or partial demolition of any building or structure within the area to which the order relates³; (2) for restricting the height of trees upon any land within the area, or requiring any tree upon any such land to be cut down or reduced in height⁴; (3) for extinguishing any private right of way over land within the area⁵; (4) for restricting the installation of cables, mains, sewers, pipes, wires or other apparatus upon, across, under or over any land within the area⁶; (5) for extinguishing, at the expiration of such period as may be determined by the directions, any subsisting right of installing or maintaining any such apparatus⁷; or (6) for requiring that, before the expiration of such period as may be determined by the directions, any such apparatus is to be removed from any land within the area⁸.

1 As to the power to make such an order see PARA 199.

2 As to the Secretary of State see PARA 33.

3 Civil Aviation Act 1982 s 46(2)(a).

4 Civil Aviation Act 1982 s 46(2)(b). Where it has been certified that a tree obstructs the approach of aircraft to, or their departure from, any aerodrome, or hinders the safe and efficient use of air navigational or aircraft landing installations, then the felling of that tree is exempt from the provisions which prohibit the felling of growing trees without a licence (see the Forestry Act 1967 s 9(1); and **FORESTRY** vol 52 (2009) PARA 120); see the Forestry (Exceptions from Restriction of Felling) Regulations 1979, SI 1979/792, reg 4(1); and **FORESTRY** vol 52 (2009) PARA 122.

5 Civil Aviation Act 1982 s 46(2)(c).

6 Civil Aviation Act 1982 s 46(2)(d) (amended by the Water Act 1989 s 190, Sch 25 para 67(1)).

7 Civil Aviation Act 1982 s 46(2)(e).

8 Civil Aviation Act 1982 s 46(2)(f).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(iii) Power to Exercise Control over Land/202. Publication of directions.

202. Publication of directions.

Immediately after the Secretary of State¹ has given a direction² by virtue of an order made to exercise control over land³, the person in respect of whom the order was made or, where the order was made in respect of Eurocontrol⁴, the Secretary of State must publish in one or more newspapers circulating in the locality a notice stating that the direction has been given⁵. Notice of the direction must be served upon every owner, lessee and occupier of the land to which the direction relates or, in the case of a direction for extinguishing a private right of way⁶, of any land to which the right of way is appurtenant, and upon every local authority in whose area any of the land is situated⁷. In the case of a direction restricting the installation of apparatus, or extinguishing rights to install or maintain apparatus, notice must be served upon every person whose rights to install or maintain apparatus are affected by the direction⁸; and, in the case of a direction requiring the removal of any apparatus, notice must be served upon the person entitled to maintain that apparatus⁹.

Unless there is an appeal¹⁰, the direction becomes operative six weeks after the date on which the notice of the direction is first published¹¹.

1 As to the Secretary of State see PARA 33.

2 As to the directions that may be given see PARA 201.

3 As to the power to make such an order see PARA 199.

4 As to Eurocontrol see PARA 23.

5 See the Civil Aviation Act 1982 s 46(7), Sch 9 paras 1(1), 11. As to the registration of such directions as local land charges see PARA 223.

6 See the Civil Aviation Act 1982 s 46(2)(c); and PARA 201 head (3).

7 Civil Aviation Act 1982 Sch 9 para 1(1), (2)(a), (b). Any notice given for the purpose of complying with the requirements of Sch 9 para 1 must state the effect of the direction: Sch 9 para 1(3). As to service of notices see PARA 224.

8 Civil Aviation Act 1982 Sch 9 para 1(1), (2)(c). See note 7.

9 Civil Aviation Act 1982 Sch 9 para 1(1), (2)(d). See note 7.

10 See PARA 203.

11 See the Civil Aviation Act 1982 s 44(8), Sch 7 para 8; applied by Sch 9 para 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(iii) Power to Exercise Control over Land/203. Questioning validity of directions.

203. Questioning validity of directions.

A direction¹ given by virtue of an order made to exercise control over land² may not be questioned in any legal proceedings³ except on the ground that the direction or any provision in it is not within the powers of the Secretary of State⁴, or that some statutory requirement has not been complied with⁵. In either of these cases a person aggrieved by the direction may, within six weeks of the first publication of notice of the direction⁶, apply to the High Court⁷.

The court may suspend the operation of the direction, or of any provision contained in it, until the final determination of the proceedings⁸. If the court is satisfied that the direction or any provision in it is not within the Secretary of State's powers, or that the applicant's interests have been substantially prejudiced by non-compliance with any statutory requirement, it may quash the direction or any provision in it either generally or in so far as it affects the applicant⁹.

Unless the direction is quashed or suspension is granted, the order becomes operative six weeks after notice of the direction is first published¹⁰.

1 As to the directions that may be given see PARA 201.

2 As to the power to make such an order see PARA 199.

3 See the Civil Aviation Act 1982 s 44(8), Sch 7 para 8; applied by s 46(7), Sch 9 para 2.

4 As to the Secretary of State see PARA 33.

5 See the Civil Aviation Act 1982 Sch 7 para 7; applied by Sch 9 para 2.

6 As to the requirement for publication of such a notice see PARA 202.

7 See the Civil Aviation Act 1982 Sch 7 para 7; applied by Sch 9 para 2.

8 Civil Aviation Act 1982 Sch 7 para 7(a); applied by Sch 9 para 2.

9 Civil Aviation Act 1982 Sch 7 para 7(b); applied by Sch 9 para 2.

10 See the Civil Aviation Act 1982 Sch 7 para 8; applied by Sch 9 para 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(iii) Power to Exercise Control over Land/204. Compensation.

204. Compensation.

Any person having an interest in land the value of which is diminished in consequence of the coming into operation of a direction¹ given by virtue of an order made to exercise control over land² is entitled to compensation from the person in respect of whom the order was made or, where the order was made in respect of Eurocontrol³, the Secretary of State⁴. Any person who sustains damage by being disturbed in the enjoyment of any right in or over land is also entitled to recover compensation, even though the damage does not consist in the diminution in value of an interest in land⁵. Compensation is payable in respect of any expenditure reasonably incurred by any person for the purpose of carrying out work required by the direction⁶.

Any compensation payable to any person by virtue of the provisions described above is reduced by the value to that person of any timber, apparatus or other materials removed in compliance with the direction⁷.

Any dispute as to whether compensation is payable, as to its amount, or as to the persons to whom it is payable, must be referred to and determined by the Lands Tribunal⁸.

Special provisions apply to the recovery of compensation by a statutory undertaker⁹ in the case of a direction affecting any building, structure or apparatus held or used by the undertaker for the purposes of his undertaking, or affecting any right to install or maintain apparatus for those purposes, or affecting any right of way enjoyed by the undertaker for those purposes¹⁰.

1 As to the directions that may be given see PARA 201.

2 As to the power to make such an order see PARA 199.

3 As to Eurocontrol see PARA 23.

4 See the Civil Aviation Act 1982 s 46(7), Sch 9 paras 3, 11. As to the Secretary of State see PARA 33.

The Land Compensation Act 1961 s 5 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 754, 760, 798, 800) (so far as it is applicable and subject to any necessary modifications) has effect for the purpose of assessing the compensation payable in respect of the diminution in the value of an interest in land: see the Civil Aviation Act 1982 Sch 9 para 8.

If an interest in land is subject to a mortgage, compensation is assessed as if the interest were not so subject, although a mortgagee is entitled to claim compensation: see s 44(8), Sch 7 para 11; applied by Sch 9 para 4. See further PARA 197. As to the meaning of 'mortgage' see PARA 197 note 3.

5 See the Civil Aviation Act 1982 Sch 9 para 5.

6 See the Civil Aviation Act 1982 Sch 9 para 6.

7 See the Civil Aviation Act 1982 Sch 9 para 7.

8 See the Civil Aviation Act 1982 Sch 9 para 9. As to the Lands Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720.

9 As to statutory undertakers see PARA 216.

10 See the Civil Aviation Act 1982 Sch 9 para 10. As to the application of special compensation provisions to statutory undertakers see PARA 217. As to the assessment of compensation see PARA 218.

UPDATE

204 Compensation

TEXT AND NOTE 8--Reference to the Lands Tribunal is now to the Upper Tribunal: Civil Aviation Act 1982 Sch 9 para 9 (amended by SI 2009/1307).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(iv) Highways/205. Power to stop up and divert highways.

(iv) Highways

205. Power to stop up and divert highways.

The Secretary of State¹ may authorise by order the stopping-up or diversion of any highway², if he is satisfied that it is necessary to do so in order to secure the safe and efficient use for civil aviation purposes³ (including the testing of aircraft designed for civil aviation) of any land vested in the Secretary of State, the Civil Aviation Authority ('CAA')⁴, a relevant airport operator⁵, or an air traffic services licence holder⁶, or of any land which any of them proposes to acquire⁷.

1 As to the Secretary of State see PARA 33.

2 This includes a highway which is temporarily stopped up or diverted under any enactment other than the Civil Aviation Act 1982: see s 48(8). As to stopping up or diverting highways see further **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 781 et seq.

3 See PARA 36 note 3.

4 As to the CAA see PARA 50 et seq.

5 As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

6 As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

7 See the Civil Aviation Act 1982 s 48(1) (amended by the Transport Act 2000 s 36, Sch 4 paras 1, 6). The Civil Aviation Act 1982 s 48 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4).

The provisions of the Civil Aviation Act 1982 s 48 (except s 48(9)) do not prejudice any power conferred on the Secretary of State by any other enactment to stop up or divert highways: see s 48(8). See also note 2.

As to telegraphic lines affected by the stopping-up, diversion or improvement of a highway see s 48(9) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 55; and the Transport Act 2000 Sch 4 paras 1, 6). As to provisions relating to electronic communications apparatus installed on land owned by a relevant airport operator and over which the highway to be stopped up, diverted or improved passes see the Airports Act 1986 s 62 (amended by the New Roads and Street Works Act 1991 s 168, Sch 8 para 118; and the Communications Act 2003 s 406(1), (7), Sch 17 para 80, Sch 19). As to electronic communications apparatus on highways see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 35, 796; and as to electronic communications apparatus generally see **TELECOMMUNICATIONS** vol 97 (2010) PARA 192 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(iv) Highways/206. Power to make supplementary provisions.

206. Power to make supplementary provisions.

An order for the stopping-up or diversion of a highway¹ may provide (1) for securing the provision or improvement of any highway where necessary or desirable in consequence of the stopping-up or diversion²; (2) for directing that any highway provided or improved in pursuance of the order is to be maintainable at public expense, and for specifying which authority is to be the highway authority for it³; (3) for directing that a highway provided or improved in consequence of the stopping-up or diversion of a trunk road is itself to be a trunk road⁴; (4) for the retention or removal of cables, mains, sewers, pipes, wires or similar apparatus placed along, across, over or under a stopped up or diverted highway, and for the extinguishment, modification or preservation of any rights as to the use or maintenance of that apparatus⁵; (5) for authorising or requiring the provision of such apparatus as is mentioned above, in relation to any highway to be improved or provided, in lieu of any apparatus removed from a highway in pursuance of the order, and for conferring rights as to the use or maintenance of apparatus so provided⁶; and (6) for requiring the Secretary of State⁷ or any other specified authority or person to pay or contribute to the cost of doing any work provided for by the order⁸. The order may contain any consequential, incidental and supplemental provisions which appear to the Secretary of State to be necessary or expedient for the purposes of the order⁹.

1 As to such orders see PARA 205.

2 See the Civil Aviation Act 1982 s 48(3)(a).

3 See the Civil Aviation Act 1982 s 48(3)(b), (c). As to highway authorities generally see **HIGHWAYS, STREETS AND BRIDGES**.

4 See the Civil Aviation Act 1982 s 48(3)(d). As to trunk roads see **HIGHWAYS, STREETS AND BRIDGES**.

5 See the Civil Aviation Act 1982 s 48(3)(e) (amended by the Water Act 1989 s 190, Sch 25 para 67(2)).

6 See the Civil Aviation Act 1982 s 48(3)(f).

7 As to the Secretary of State see PARA 33.

8 See the Civil Aviation Act 1982 s 48(3)(g)(i). The order may also provide for the Secretary of State or any other specified authority or person to repay or make contributions in respect of any compensation paid by the highway authority in respect of restrictions imposed under the Restriction of Ribbon Development Act 1935 ss 1, 2 (repealed) as respects any highway stopped up or diverted under the order: see the Civil Aviation Act 1982 s 48(3)(g)(ii).

9 See the Civil Aviation Act 1982 s 48(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(iv) Highways/207. Procedure for making orders.

207. Procedure for making orders.

An order for the stopping-up or diversion of highways¹ made by the Secretary of State² is subject to special parliamentary procedure³.

Provisions of the Statutory Orders (Special Procedure) Act 1945⁴ relating to the notices to be given and the other requirements to be complied with before an order is made apply to the making of such an order⁵. The Civil Aviation Act 1982 also requires notice of the proposed order (1) to be displayed at the ends of that part of the highway which is to be stopped up or diverted under the order⁶; (2) to be sent to every local authority⁷ in whose area any highway to be stopped up or diverted under the order, or to be provided or improved under the order, is situated⁸; and (3) to be served on any water, gas or electricity undertakers having any cables, mains, sewers, pipes or wires along, across, under or over any highway which is to be stopped up or diverted under the order⁹.

1 As to such orders see PARA 205.

2 As to the Secretary of State see PARA 33.

3 See the Civil Aviation Act 1982 s 48(5). As to special parliamentary procedure see **PARLIAMENT** vol 34 (Reissue) PARA 912 et seq.

4 See the Statutory Orders (Special Procedure) Act 1945 s 2, Sch 1: see **PARLIAMENT** vol 34 (Reissue) PARA 915.

5 See the Civil Aviation Act 1982 s 48(5).

6 See the Civil Aviation Act 1982 s 48(6)(a).

7 For these purposes, 'local authority' includes, in England, a parish council and the parish meeting of a parish not having a separate parish council and, in Wales, a council of a community: Civil Aviation Act 1982 s 48(7)(a) (amended by the Statute Law (Repeals) Act 1995). As to the meaning of 'local authority' generally see PARA 47 note 1.

8 See the Civil Aviation Act 1982 s 48(6)(b).

9 See the Civil Aviation Act 1982 s 48(6)(c) (amended by the Water Act 1989 s 190, Sch 25 para 67(2)). As to service of notices see PARA 224. For these purposes, the reference to electricity undertakers is to be deemed to include references to the operator of an electronic communications code network: Civil Aviation Act 1982 s 48(7)(b) (amended by the Telecommunications Act 1984 s 109, Sch 4 para 84; the Communications Act 2003 s 406(1), Sch 17 para 60; and SI 2001/1149). As to electricity undertakers see **FUEL AND ENERGY**; and as to operators of electronic communications code networks see **TELECOMMUNICATIONS** vol 97 (2010) PARA 151 et seq. For these purposes, the reference to water undertakers is a reference to the Environment Agency, a water undertaker or a sewerage undertaker: Civil Aviation Act 1982 s 48(7)(c) (added by the Water Act 1989 Sch 25 para 67(2); and amended by SI 1996/593). As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 318 et seq. As to sewerage undertakers see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 999 et seq; **WATER AND WATERWAYS** vol 100 (2009) PARA 137.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(iv) Highways/208. Compulsory purchase of land.

208. Compulsory purchase of land.

The Secretary of State¹ may be authorised to purchase land compulsorily for the purpose of providing or improving any highway in pursuance of an order authorising the stopping-up or diversion of any highway², or for any other purpose for which land is required in connection with such an order³.

Where such an order is made in relation to land which is vested in the Civil Aviation Authority ('CAA')⁴ or which the CAA proposes to acquire, the CAA may exercise its power under the Civil Aviation Act 1982⁵ to acquire land compulsorily for similar purposes⁶.

Where such an order is made in relation to land which is vested in an air traffic services licence holder⁷ or which the licence holder proposes to acquire, the licence holder's power of acquiring land compulsorily under the Civil Aviation Act 1982⁸ may be exercised for similar purposes⁹.

1 As to the Secretary of State see PARA 33.

2 As to such orders see PARA 205.

3 Civil Aviation Act 1982 s 49(1). The provisions of the Acquisition of Land Act 1981 apply to such a compulsory purchase: Civil Aviation Act 1982 s 49(2). See **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556 et seq.

As to the application of special compensation provisions to statutory undertakers see PARA 217. As to the assessment of compensation for statutory undertakers see PARA 218.

4 As to the CAA see PARA 50 et seq.

5 Ie under the Civil Aviation Act 1982 s 42: see PARA 187.

6 See the Civil Aviation Act 1982 s 49(3).

7 As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

8 Ie under the Civil Aviation Act 1982 s 42A: see PARA 188.

9 See the Civil Aviation Act 1982 s 49(3A) (added by the Transport Act 2000 s 36, Sch 4 paras 1, 7).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(v) Power to Restrict Use of Aerodromes/209. Use of aerodromes restricted for the purposes of safety.

(v) Power to Restrict Use of Aerodromes

209. Use of aerodromes restricted for the purposes of safety.

The Secretary of State¹ may by order impose such prohibitions or restrictions on the use of any area of land or water as a place for the arrival and departure of civil aircraft as he thinks expedient in order to secure the safe arrival and departure of aircraft at any aerodrome² which is vested in him or which is under his control, or at any aerodrome in the United Kingdom³ which is owned or managed by the Civil Aviation Authority ('CAA')⁴ or by a relevant airport operator⁵. However, no such prohibition or restriction may be imposed in relation to tidal waters beyond those of the territorial waters adjacent to the United Kingdom⁶.

1 As to the Secretary of State see PARA 33.

2 For these purposes, 'aerodrome' includes part of an aerodrome: Civil Aviation Act 1982 s 45(8). As to the meaning of 'aerodrome' generally see PARA 175.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 As to the CAA see PARA 50 et seq.

5 Civil Aviation Act 1982 s 45(1). Section 45 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4). As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

As to the power of the Secretary of State to restrict the use of aerodromes and land adjacent for the purposes of security see the Aviation Security Act 1982; the Aviation and Maritime Security Act 1990; and PARA 331 et seq.

6 See the Civil Aviation Act 1982 s 45(2). As to territorial waters see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 123 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(v) Power to Restrict Use of Aerodromes/210. Procedure for making orders.

210. Procedure for making orders.

The same procedural provisions apply to the making of orders prohibiting or restricting the use of land for the arrival and departure of civil aircraft¹ as apply in the case of orders creating rights in relation to land². Before making an order, the Secretary of State³ must, unless the order is to be made on the application of the Civil Aviation Authority ('CAA')⁴, a relevant airport operator⁵ or an air traffic services licence holder⁶:

- 154 (1) publish in one or more newspapers circulating in the locality in which the land is situated⁷; and
- 155 (2) serve on every owner, lessee and occupier of any of the land and upon every local authority⁸ within whose area any of the land is situated⁹,

a notice stating that the Secretary of State proposes to make the order and its effect, and specifying the time within which, and the manner in which, objections to the making of the order may be made¹⁰. Where the CAA, a relevant airport operator or an air traffic services licence holder is making an application for an order, that authority or person must, before making the application, similarly publish and serve a notice of the proposed application¹¹. If no objection is duly made, or if all objections are withdrawn, the Secretary of State may make the order¹². If any objection duly made is not withdrawn, the Secretary of State must, before making the order, either cause a public local inquiry to be held or afford any person who has made such an objection an opportunity of being heard by a person whom he has appointed for the purpose¹³. After considering the objection and the report of the person who held the inquiry or before whom the hearing was held, the Secretary of State may, if he thinks fit, make the order¹⁴. However, if he is satisfied that an objection relates solely to matters which can be dealt with by the tribunal assessing compensation, the Secretary of State may disregard it in considering whether to make the order¹⁵. Immediately after an order has been made, a notice must be published in one or more newspapers circulating in the district in which the land is situated stating that the order has been made and naming a place where a copy of it may be seen at all reasonable hours¹⁶. A similar notice must be served on every person who, having duly objected to the order, has not withdrawn his objection¹⁷.

In the case of orders imposing prohibitions or restrictions on the use of water¹⁸, the Secretary of State must, before making the order, publish notice of his intention to make the order in such manner as he thinks best calculated to bring it to the attention of persons who will be affected by it¹⁹. Immediately after the order has been made, he must publish in one or more newspapers circulating in the locality to which the order relates a notice stating that the order has been made and naming a place where a copy of the order may be seen at all reasonable hours; and he must also serve a similar notice on any person who in his opinion will be affected²⁰.

Unless there is an appeal²¹, an order, whether relating to land or water, becomes operative six weeks after the date on which the notice of its making is first published²².

1 As to the power to make such orders see PARA 209.

2 As to orders creating rights in relation to land see PARA 191; and as to the procedure for making such orders see PARA 195.

3 As to the Secretary of State see PARA 33.

4 As to the CAA see PARA 50 et seq.

5 As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

6 As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

7 Civil Aviation Act 1982 s 44(8), Sch 7 para 1(1)(a) (Sch 7 para 1 amended by the Transport Act 2000 s 36, Sch 4 paras 1, 16); applied by the Civil Aviation Act 1982 s 45(3). The provisions of s 45 and Sch 7 apply in relation to any relevant airport operator as they apply to the CAA: see the Airports Act 1986 s 59(3), (4).

8 As to the meaning of 'local authority' see PARA 47 note 1.

9 Civil Aviation Act 1982 Sch 7 para 1(1)(b) (as amended: see note 7); applied by s 45(3). As to service of notices see PARA 224.

10 Civil Aviation Act 1982 Sch 7 para 1(1) (as amended: see note 7); applied by s 45(3). The time specified for the making of objections must be not less than 28 days from the service of the notice: see Sch 7 para 1(1) (as so amended); applied by s 45(3).

11 See the Civil Aviation Act 1982 Sch 7 para 1(2) (as amended: see note 7); applied by s 45(3). The time specified for the making of objections must be not less than 42 days from the service of the notice: see Sch 7 para 1(2) (as so amended); applied by s 45(3).

12 Civil Aviation Act 1982 Sch 7 para 2; applied by s 45(3).

13 Civil Aviation Act 1982 Sch 7 para 3; applied by s 45(3).

14 Civil Aviation Act 1982 Sch 7 para 3; applied by s 45(3).

15 See the Civil Aviation Act 1982 Sch 7 para 4; applied by s 45(3).

16 See the Civil Aviation Act 1982 Sch 7 para 5(1); applied by s 45(3). Where the order is made in favour of the CAA, a relevant airport operator, or an air traffic services licence holder, the notice must be given by that authority or person, as the case may be; and, in any other case, it must be given by the Secretary of State: see Sch 7 para 5(2) (amended by the Transport Act 2000 s 274, Sch 4 para 16, Sch 31 Pt I(4)); applied by the Civil Aviation Act 1982 s 45(3). As to the registration of orders as local land charges see PARA 223.

17 See the Civil Aviation Act 1982 Sch 7 para 5(1); applied by s 45(3). See note 16.

18 As to the power to make such orders see PARA 209.

19 Civil Aviation Act 1982 s 45(3)(a).

20 Civil Aviation Act 1982 s 45(3)(b).

21 See PARA 211.

22 See the Civil Aviation Act 1982 Sch 7 para 8; applied by s 45(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(v) Power to Restrict Use of Aerodromes/211. Questioning validity of orders.

211. Questioning validity of orders.

An order prohibiting or restricting the use of land or water for the arrival and departure of civil aircraft¹ may not be questioned, whether before or after it has been made, in any legal proceedings² except on the ground that the order or any provision in it is not within the powers of the Secretary of State³, or that some statutory requirement⁴ in relation to the making of the order has not been complied with⁵. In either of these cases a person aggrieved by the order may, within six weeks of the first publication of notice that the order has been made⁶, apply to the High Court⁷.

The court may suspend the operation of the order, or of any provision contained in it, until the final determination of the proceedings⁸. If the court is satisfied that the order or any provision in it is not within the Secretary of State's powers, or that the applicant's interests have been substantially prejudiced by non-compliance with any statutory requirement, it may quash the order or any provision in it either generally or in so far as it affects the applicant⁹.

Unless the order is quashed or suspension is granted, the order becomes operative six weeks after notice of its making is first published¹⁰.

- 1 As to the power to make such orders see PARA 209.
- 2 See the Civil Aviation Act 1982 s 44(8), Sch 7 para 8; applied by s 45(4).
- 3 As to the Secretary of State see PARA 33.
- 4 See PARA 210.
- 5 See the Civil Aviation Act 1982 Sch 7 para 7; applied by s 45(4).
- 6 As to the requirement for such a notice see PARA 210.
- 7 See the Civil Aviation Act 1982 Sch 7 para 7; applied by s 45(4).
- 8 Civil Aviation Act 1982 Sch 7 para 7(a); applied by s 45(4).
- 9 Civil Aviation Act 1982 Sch 7 para 7(b); applied by s 45(4).
- 10 See the Civil Aviation Act 1982 Sch 7 para 8; applied by s 45(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(v) Power to Restrict Use of Aerodromes/212. Compensation.

212. Compensation.

Where an order prohibiting or restricting the use of land or water for the arrival and departure of civil aircraft¹ has been made, any person having an interest in land to which the order relates is entitled to recover compensation if the value of his interest is diminished by the coming into operation of the order². Compensation is recoverable from (1) the Secretary of State³, if the order is made in respect of an aerodrome⁴ vested in him or under his control⁵; (2) the Civil Aviation Authority ('CAA')⁶, if the order is made in respect of an aerodrome owned or managed by the CAA⁷; or (3) the relevant airport operator⁸, if the order is made in respect of an aerodrome owned or managed by a relevant airport operator⁹. Any person who sustains damage by being disturbed in the use of land or water is also entitled to recover compensation, even though the damage does not consist in the diminution in value of an interest in land¹⁰.

Any dispute as to whether compensation is payable, or as to its amount, or as to the persons to whom it is payable, must be referred to and determined by the Lands Tribunal¹¹.

No compensation is payable in respect of the imposition of prohibitions or restrictions upon the use of an aerodrome which was first established as such after 31 July 1946¹² unless it was so established with the Secretary of State's consent¹³.

1 As to the power to make such orders see PARA 209.

2 See the Civil Aviation Act 1982 s 45(4), Sch 8 para 1. The Land Compensation Act 1961 s 5 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 754, 760, 798, 800) (so far as it is applicable and subject to any necessary modifications) has effect for the purpose of assessing the compensation payable in respect of the diminution in the value of an interest in land: see the Civil Aviation Act 1982 Sch 8 para 4.

If an interest in land is subject to a mortgage, compensation is assessed as if the interest were not so subject, although a mortgagee is entitled to claim compensation: see s 44(8), Sch 7 para 11; applied by Sch 8 para 2. See further PARA 197. As to the meaning of 'mortgage' see PARA 197 note 3.

3 As to the Secretary of State see PARA 33.

4 As to the meaning of 'aerodrome' see PARA 175. See also PARA 209 note 2.

5 See the Civil Aviation Act 1982 Sch 8 para 1(a).

6 As to the CAA see PARA 50 et seq.

7 See the Civil Aviation Act 1982 Sch 8 para 1(b).

8 As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

9 See the Civil Aviation Act 1982 Sch 8 para 1(b). Schedule 8 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4).

10 See the Civil Aviation Act 1982 Sch 8 para 3.

11 See the Civil Aviation Act 1982 Sch 8 para 5. As to the Lands Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720.

12 Ie the date of the passing of the Civil Aviation Act 1946 (now repealed).

13 See the Civil Aviation Act 1982 s 45(4).

UPDATE

212 Compensation

TEXT AND NOTE 11--Reference to the Lands Tribunal is now to the Upper Tribunal: Civil Aviation Act 1982 Sch 8 para 5 (amended by SI 2009/1307).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(v) Power to Restrict Use of Aerodromes/213. Offences.

213. Offences.

Any person who contravenes the provisions of an order prohibiting or restricting the use of land or water for the arrival and departure of civil aircraft¹ is liable to a penalty in respect of each offence². Where an offence against such an order is committed on tidal waters outside the ordinary jurisdiction of a court of summary jurisdiction³, the offence may be tried by the court of summary jurisdiction having jurisdiction over that part of the United Kingdom⁴ which is nearest to the place where the offence was committed⁵.

1 As to the power to make such orders see PARA 209.

2 See the Civil Aviation Act 1982 s 45(5). The penalty on summary conviction is a fine not exceeding the statutory maximum or imprisonment for a term not exceeding three months, or both; and the penalty on conviction on indictment is a fine or imprisonment for a term not exceeding two years, or both: see s 45(5)(a), (b). As to the statutory maximum see PARA 43 note 12. As to offences by bodies corporate see s 99 (amended by the Airports Act 1986 s 83(5), Sch 6 Pt II).

As to who may institute proceedings for an offence under the Civil Aviation Act 1982 s 45 see s 45(7).

3 As to the ordinary jurisdiction of a court of summary jurisdiction see **MAGISTRATES**.

4 As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 See the Civil Aviation Act 1982 s 45(6).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(vi) Power of Entry for Survey/214. Power of entry for purposes of survey.

(vi) Power of Entry for Survey

214. Power of entry for purposes of survey.

Any person authorised by the Secretary of State¹ in writing may at all reasonable times, on producing evidence of his authority if so required, enter upon land in order to make a survey². Such a survey may be required³ (1) where the Secretary of State has made or confirmed or is considering the making or confirmation of an order authorising the compulsory acquisition of land⁴; (2) where the Secretary of State has made or has under consideration the making of an order providing for the creation of easements over land or of other rights in or in relation to land⁵; or (3) where the Secretary of State has made, or has under consideration the making of, an order declaring any area of land to be subject to control by directions⁶. Admission to land which is occupied may only be demanded as of right if notice of the intended entry has been served on the occupier⁷.

A person who obstructs a duly authorised person in the exercise of his power to enter on land and make a survey commits an offence and is liable to a penalty⁸.

1 As to the Secretary of State see PARA 33.

2 See the Civil Aviation Act 1982 s 50(2).

3 As to who may require such a survey to be made, and for what purpose, see the Civil Aviation Act 1982 s 50(3) (amended by the Transport Act 2000 s 36, Sch 4 paras 1, 8).

4 See the Civil Aviation Act 1982 s 50(1) (amended by the Transport Act 2000 Sch 4 para 8). As to the compulsory acquisition of land see PARA 186 et seq.

5 See the Civil Aviation Act 1982 s 50(1) (as amended: see note 4). As to the creation and acquisition of rights over land see PARA 191 et seq.

6 See the Civil Aviation Act 1982 s 50(1) (as amended: see note 4). As to the power to exercise control over land by giving directions see PARA 199 et seq.

7 See the Civil Aviation Act 1982 s 50(4). As to service of notices see PARA 224.

8 See the Civil Aviation Act 1982 s 50(5) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). The penalty on summary conviction is a fine not exceeding level 2 on the standard scale: see the Civil Aviation Act 1982 s 50(5) (as so amended). As to the standard scale see PARA 50 note 8. As to offences by bodies corporate see s 99 (amended by the Airports Act 1986 s 83(5), Sch 6 Pt II).

As to who may institute proceedings for an offence see the Civil Aviation Act 1982 s 50(6).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(vi) Power of Entry for Survey/215. Compensation.

215. Compensation.

If any land is damaged in the exercise of a power of entry or in the making of any survey¹, such compensation as may be just must be paid to the persons interested in the land². Any dispute as to whether compensation is payable, as to its amount, or as to the persons to whom it is payable, must be referred to and determined by the Lands Tribunal³.

1 As to the power to enter upon land in order to make a survey see PARA 214.

2 See the Civil Aviation Act 1982 s 50(7) (amended by the Transport Act 2000 s 36, Sch 4 paras 1, 8). Compensation must be paid by the Secretary of State, the Civil Aviation Authority ('CAA'), the relevant airport operator or the relevant air traffic services licence holder, as the case may be; and in the case of an order declaring any area of land to be subject to control by directions (see the Civil Aviation Act 1982 s 46(1); and PARA 199), the compensation is payable by the person in respect of whom the order in question has been or is to be made: see s 50(7) (as so amended). Section 50 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4). As to the CAA see PARA 50 et seq. As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1. As to the Secretary of State see PARA 33. As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

3 See the Civil Aviation Act 1982 s 50(7) (as amended: see note 2). As to the Lands Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720.

UPDATE

215 Compensation

TEXT AND NOTE 3--Reference to the Lands Tribunal is now to the Upper Tribunal: Civil Aviation Act 1982 s 50(7) (amended by SI 2009/1307).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(vii) Statutory Undertakers/216. Meaning of 'statutory undertaker'.

(vii) Statutory Undertakers

216. Meaning of 'statutory undertaker'.

For the purposes of the Civil Aviation Act 1982, 'statutory undertaker' means the Civil Aviation Authority ('CAA')¹, an air traffic services licence holder², a universal service provider in connection with the provision of a universal postal service³, or any person (including a local authority⁴) who is authorised by any Act, whether public general or local, or by any order or scheme made under or confirmed by any Act, to construct, work or carry on (1) any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking; or (2) any undertaking for the supply of hydraulic power⁵. 'Statutory undertaking' has a corresponding meaning⁶.

In addition, the Environment Agency⁷, every water undertaker⁸ and every sewerage undertaker⁹ are deemed to be statutory undertakers and their undertakings statutory undertakings for these purposes¹⁰; and, for certain purposes¹¹, the holder of a licence under the Electricity Act 1989¹² is deemed to be a statutory undertaker and his undertaking a statutory undertaking¹³.

1 The Civil Aviation Act 1982 provides that the CAA is to be deemed a statutory undertaker for the purposes of various enactments other than that Act: see s 19, Sch 2 (amended by the Building Act 1984 s 133(2), Sch 7; the Housing (Consequential Provisions) Act 1985 s 4, Sch 2 para 52; the Water Act 1989 s 190, Sch 27 Pt I; the Enterprise and New Towns (Scotland) Act 1990 s 38, Sch 4 para 12, Sch 5 Pt III; the Planning (Consequential Provisions) Act 1990 s 3, Sch 1 Pt I; the Planning (Consequential Provisions) (Scotland) Act 1997 s 3, Sch 1 Pt I; the Civil Contingencies Act 2004 s 32(2), Sch 3; and the Housing Act 2004 s 266, Sch 16). For the purposes of the law relating to rating, the CAA's undertaking is treated as not being a public utility undertaking: Civil Aviation Act 1982 s 19(3). As to the CAA see PARA 50 et seq.

2 For these purposes, an air traffic services licence holder is not to be considered a statutory undertaker unless it is carrying out activities authorised by the licence; and the licence holder's undertaking is not to be considered a statutory undertaking except to the extent that it is its undertaking as licence holder: Civil Aviation Act 1982 s 105(1ZA) (added by SI 2001/4050). The Transport Act 2000 provides that a licence holder carrying out activities authorised by its licence is to be taken to be a statutory undertaker for the purposes of various enactments other than that Act: see s 37, Sch 5 (Sch 5 amended by the Housing Act 2004 s 266, Sch 16; and the Civil Contingencies Act 2004 s 32(2), Sch 3). As to the meaning of 'licence' see PARA 139 note 4. As to the meaning of 'licence holder' see PARA 188 note 1; and see PARA 139 note 4. As to the licensing of air traffic services see PARA 139 et seq.

3 'Universal service provider' has the same meaning as in the Postal Services Act 2000; and references to provision of a universal postal service are to be construed in accordance with that Act: Civil Aviation Act 1982 s 105(1) (definition added by SI 2001/1149). See **POST OFFICE**.

4 As to the meaning of 'local authority' see PARA 47 note 1.

5 See the Civil Aviation Act 1982 s 105(1) (definition amended by the Telecommunications Act 1984 s 109, Sch 7; the Gas Act 1986 s 67(3), (4), Sch 8 Pt I para 17, Sch 9 Pt I; the Electricity Act 1989 s 112(4), Sch 18; the Water Act 1989 s 190, Sch 27 Pt I; SI 2001/1149; and SI 2001/4050). As to the status of certain airport operators as statutory undertakers see the Airports Act 1986 Pt V (ss 57-62); and PARA 189.

6 Civil Aviation Act 1982 s 105(1).

7 As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

8 As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 318 et seq.

9 As to sewerage undertakers see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 999 et seq; **WATER AND WATERWAYS** vol 100 (2009) PARA 137.

10 See the Water Act 1989 s 190(1), Sch 25 para 1(1), (2)(xxviii) (Sch 25 para 1(1) amended by SI 1996/593).

11 Ie for the purposes of the Civil Aviation Act 1982 s 53 (see PARA 190) or, in the case of a licence holder entitled to exercise any power of compulsory acquisition under the Electricity Act 1989 s 10(1), Sch 3 (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1281), for the purposes of the Civil Aviation Act 1982 s 47 (see PARA 292), s 48 (see PARAS 205-207), s 49 (see PARA 208), s 51 (see PARA 217), Sch 9 (see PARA 202 et seq).

12 Ie under the Electricity Act 1989 s 6(1): see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1065 et seq.

13 See the Electricity Act 1989 s 112(1), Sch 16 paras 1(1)(xxv), 2(2)(h), (9).

UPDATE

216 Meaning of 'statutory undertaker'

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(vii) Statutory Undertakers/217. Application of special provisions.

217. Application of special provisions.

The instances in which the special compensation provisions¹ relating to statutory undertakers² apply are (1) where land held by a statutory undertaker for the purpose of the carrying on of his undertaking is compulsorily purchased³; (2) where any order is made for the creation of an easement over such land, or of any other right in or in relation to the land⁴; or (3) where a direction is given⁵ which affects any building, structure or apparatus held or used by a statutory undertaker for the purposes of his undertaking, or which affects any of his rights to install or maintain apparatus for those purposes, or which affects any right of way enjoyed by him for those purposes⁶.

Even in these cases the special compensation provisions do not apply unless the Secretary of State⁷ has, upon representation being made to him⁸, certified that the land, building or structure, as the case may be, is by reason of its nature or situation comparable less with the generality of land, building or structure than with land, buildings or structures held for the purpose of carrying on statutory undertakings⁹.

1 As to the assessment of compensation see PARA 218.

2 As to the meaning of 'statutory undertaker' see PARA 216.

3 Civil Aviation Act 1982 s 51(1)(a). Section 51(1)(a) refers to compulsory purchase in pursuance of Pt II (ss 25-59), otherwise than under s 30 (provision of aerodromes etc by local authorities: see PARA 47): see s 51(1)(a). Section 51(1) does not apply to any compensation payable by virtue of s 42 (acquisition of land by the Civil Aviation Authority: see PARA 187): see s 51(1). As to the compulsory acquisition of land see PARA 186 et seq.

4 Civil Aviation Act 1982 s 51(1)(b). See also Sch 7 para 12; and PARA 198. Section 51(1)(b) refers to creation of an easement etc by virtue of an order made under Pt II, otherwise than under s 30 (provision of aerodromes etc by local authorities: see PARA 47): see s 51(1)(b). As to the creation and acquisition of rights over land see PARA 191 et seq.

5 Ie under the Civil Aviation Act 1982 s 46: see PARA 199 et seq.

6 Civil Aviation Act 1982 s 51(1)(c). As to the power to exercise control over land by giving directions see PARA 199 et seq.

7 As to the Secretary of State see PARA 33.

8 Ie before the expiration of the time within which objections may be made to the making of the compulsory purchase order or the order creating the easement or right; or, in the case of a direction affecting a building or structure, before the expiration of the time within which an application may be made to the court with respect to the direction: see the Civil Aviation Act 1982 s 51(6). As to the time within which objections may be made in relation to the compulsory acquisition of land see the Acquisition of Land Act 1981; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556 et seq. As to the time within which objections may be made in relation to orders creating easements and other rights see PARA 195. As to the time within which an application may be made to the court with respect to a direction see PARA 203.

9 See the Civil Aviation Act 1982 s 51(6).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(vii) Statutory Undertakers/218. Assessment of compensation.

218. Assessment of compensation.

Where the special compensation provisions apply¹, the compensation to be paid to a statutory undertaker² must be assessed, in default of agreement, by the Lands Tribunal³. The amount of the compensation must be calculated in accordance with provisions of the Town and Country Planning Act 1990⁴, with certain minor modifications⁵.

Those provisions, as modified, provide that the compensation payable is to include: the amount of any expenditure reasonably incurred for the purpose of any adjustment of the carrying on of the undertaking necessitated by the acquisition; the estimated amount of any decrease in net receipts by the undertaking in consequence of the adjustment or, where no adjustment is made, of any decrease attributable to the acquisition; and, in the case of the imposition of a requirement to remove apparatus or to demolish a building or structure, any reasonable expense incurred in complying with the requirement, reduced by the value of the apparatus removed or materials salvaged⁶.

In the case, however, of compensation for compulsory purchase, the person carrying on the undertaking may elect⁷ that the compensation for all or any of the land acquired is to be assessed in accordance with the enactments which would apply apart from these special compensation provisions⁸.

1 See PARA 217.

2 As to the meaning of 'statutory undertaker' see PARA 216.

3 See the Civil Aviation Act 1982 s 51(1). See also the Lands Tribunal (Statutory Undertakers Compensation Jurisdiction) Order 1952, SI 1952/161; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 722. As to the Lands Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720.

The Civil Aviation Act 1982 s 51(1) does not apply to any compensation payable by virtue of s 42 (acquisition of land by the Civil Aviation Authority: see PARA 187): see s 51(1).

4 Ie the Town and Country Planning Act 1990 s 280(2)-(5), (7), (8): see the text and note 6; and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1028.

5 See the Civil Aviation Act 1982 s 51(2)(a), (5) (s 51(2)(a), (5) amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 55(2)).

6 See the Town and Country Planning Act 1990 s 280(2); modified by the Civil Aviation Act 1982 s 51(5) (as amended: see note 5). See further **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1028.

7 Ie by written notice given to the Secretary of State before the expiration of two months from the date on which notice to treat was served: see the Civil Aviation Act 1982 s 51(4). As to the Secretary of State see PARA 33.

8 See the Civil Aviation Act 1982 s 51(3), (4). As to the enactments and rules by which compensation is assessed apart from the special compensation provisions see the Acquisition of Land Act 1981; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 556 et seq. However, the Land Compensation Act 1961 s 5(5) (which relates to compensation on the basis of equivalent reinstatement: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 754, 800) does not apply to the assessment of compensation when such an election has been made: see the Civil Aviation Act 1982 s 51(4).

UPDATE

218 Assessment of compensation

TEXT AND NOTE 3--Reference to the Lands Tribunal is now to the Upper Tribunal: Civil Aviation Act 1982 s 51(1) (amended by SI 2009/1307).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(vii) Statutory Undertakers/219. Adjustment of undertakers' functions.

219. Adjustment of undertakers' functions.

Where it appears to the Secretary of State¹, upon a representation made by a statutory undertaker², that, in order to facilitate any adjustment of the carrying on of the statutory undertaking necessitated by an order made or proposed to be made, or by a direction given or proposed to be given, in pursuance of Part II of the Civil Aviation Act 1982³, it is expedient to extend or modify the undertaker's powers and duties in relation to the carrying on of the undertaking, the Secretary of State may make an order providing for such extension or modification of those powers and duties as appears to him to be requisite for facilitating the adjustment⁴.

An order so made may empower the undertaker to acquire any land specified in the order, either compulsorily or by agreement, and to erect or construct any buildings or works so specified⁵. In relation to the acquisition of such land and the construction of such works, the order may apply enactments⁶ relating to the acquisition of land and the construction of works⁷. An order may also contain such incidental and supplemental matters as appear to the Secretary of State to be expedient⁸.

Any such order is subject to special parliamentary procedure⁹.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'statutory undertaker' see PARA 216. As soon as may be after making the representation, the undertaker must publish, in such form and manner as the Secretary of State directs, a notice giving such particulars of the subject of the representation as may be directed, and specifying how and when objections to the making of the order on the representation may be made; and he must also, if so directed by the Secretary of State, serve a similar notice on such persons, or persons of such classes, as may be so directed: see the Civil Aviation Act 1982 s 51(7), Sch 10 para 3 (s 51(7) amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 55). As to service of notices see PARA 224.

3 I.e. the Civil Aviation Act 1982 Pt II (ss 25-59). However, references to an order made or proposed to be made in pursuance of Pt II are to be deemed not to include a reference to an order made or proposed to be made in pursuance of s 30 (acquisition of land by local authorities: see PARA 47) or under any enactment conferring a power exercisable by statutory instrument: s 51(7)(b). For the purposes of Sch 10, references to an order made or proposed to be made in pursuance of Pt II have effect, in relation to an order for the compulsory purchase of land by the Civil Aviation Authority ('CAA') or an air traffic services licence holder, as references to an order confirmed or proposed to be confirmed by the Secretary of State: s 51(7)(a) (amended by the Transport Act 2000 s 36, Sch 4 paras 1, 9). As to the CAA see PARA 50 et seq. As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq. The provisions of the Civil Aviation Act 1982 Sch 10 apply as if the references to an order made or proposed to be made under Pt II or to the making of such an order included an order for the compulsory purchase of land by a relevant airport operator which the Secretary of State has confirmed or proposes to confirm or (as the case may be) the confirmation of such an order: see the Airports Act 1986 s 59(3). The Civil Aviation Act 1982 Sch 10 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4). As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

4 See the Civil Aviation Act 1982 Sch 10 para 1. The provisions of Sch 10 broadly correspond with those of the Town and Country Planning Act 1990 ss 275-277 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARAS 1023-1025): see the Civil Aviation Act 1982 s 51(7) (as amended: see note 2). The provisions of the Town and Country Planning Act 1990 s 278 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARAS 1026) have effect as if references to s 275 or s 276 included references to the Civil Aviation Act 1982 Sch 10 Pt I (PARAS 1-5); and subject to those provisions in a case in which they have effect, the Secretary of State may if he thinks fit make an order: see Sch 10 para 4 (amended by the Planning (Consequential Provisions) Act 1990 s 3, Sch 1 Pt I, Sch 2 para 55(5)(a)).

5 Civil Aviation Act 1982 Sch 10 para 2(a).

6 See eg the Land Compensation Act 1961; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 715 et seq.

7 Civil Aviation Act 1982 Sch 10 para 2(b).

8 Civil Aviation Act 1982 Sch 10 para 2.

9 Civil Aviation Act 1982 Sch 10 para 5. As to special parliamentary procedure see **PARLIAMENT** vol 34 (Reissue) PARA 912 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(vii) Statutory Undertakers/220. Relief from undertakers' obligations.

220. Relief from undertakers' obligations.

If, on a representation made by a statutory undertaker¹, the Secretary of State is satisfied that the making of any order or the giving of any direction under or in pursuance of Part II of the Civil Aviation Act 1982² has rendered impracticable the fulfilment of any obligation incurred by the undertaker in connection with the carrying on of the undertaking, he may by order direct that the undertaker is to be relieved of that obligation, either absolutely or to such extent as may be specified in the order³.

If any objection is made to the making of such an order and is not withdrawn before the order is made, the order is subject to special parliamentary procedure⁴.

1 As to the meaning of 'statutory undertaker' see PARA 216. As soon as may be after making the representation the undertaker must, as directed by the Secretary of State, do one or both of the following, that is to say: (1) publish a notice giving such particulars of the subject of the representation as may be directed and specifying how and when objections to the making of an order on the representation may be made; and (2) serve such a notice on such persons, or persons of such classes, as may be directed: see the Civil Aviation Act 1982 s 51(7), Sch 10 para 7 (s 51(7) amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 55). As to service of notices see PARA 224. As to the Secretary of State see PARA 33.

2 Ie the Civil Aviation Act 1982 Pt II (ss 25-59). See also PARA 219 note 3.

3 Civil Aviation Act 1982 Sch 10 para 6. The provisions of Sch 10 broadly correspond with those of the Town and Country Planning Act 1990 ss 275-277 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARAS 1023-1025): see the Civil Aviation Act 1982 s 51(7) (as amended: see note 1). The provisions of the Town and Country Planning Act 1990 s 278 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1026) have effect as if references to s 277 included references to the Civil Aviation Act 1982 Sch 10 Pt II (PARAS 6-9); and subject to those provisions in a case in which they have effect, the Secretary of State may if he thinks fit make an order: see Sch 10 para 8 (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 55(5)(b)).

4 Civil Aviation Act 1982 Sch 10 para 9. As to special parliamentary procedure see **PARLIAMENT** vol 34 (Reissue) PARA 912 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(viii) Displacement from Land/221. Duty to secure alternative accommodation.

(viii) Displacement from Land

221. Duty to secure alternative accommodation.

Where the Secretary of State¹ has acquired land for purposes connected with the discharge of his functions relating to civil aviation², or in pursuance of Part II of the Civil Aviation Act 1982³, and where the use of the land for the purposes for which it was acquired involves the displacement of persons residing in premises on that land⁴, he has a duty to secure that any such person is provided with reasonable residential accommodation⁵. The provision of such accommodation need not be made in advance of the displacement if the Secretary of State is satisfied that for reasons of exceptional public importance it is essential that the displacement should be effected before such accommodation can be found⁶.

The Civil Aviation Authority ('CAA')⁷ and a relevant airport operator⁸ each has a similar duty in relation to displaced persons where land has been acquired for purposes connected with the discharge of its functions⁹, as does a relevant air traffic services licence holder¹⁰ who has acquired land for purposes connected with the carrying out of the activities authorised by the licence¹¹.

There is also a duty to secure the provision of accommodation where the Secretary of State gives a direction in relation to land¹², and the execution of the direction involves the displacement of persons residing in premises on the land¹³.

1 As to the Secretary of State see PARA 33.

2 As to the Secretary of State's civil aviation functions see PARA 34 et seq.

3 Ie the Civil Aviation Act 1982 Pt II (ss 25-59). As to the power to acquire land see PARA 186 et seq.

4 See the Civil Aviation Act 1982 s 52(1)(a), (b).

5 See the Civil Aviation Act 1982 s 52(2)(a) (amended by the Transport Act 2000 s 36, Sch 4 paras 1, 10). The Secretary of State must secure the provision of residential accommodation suitable to the reasonable requirements of the persons who require it in consequence of the displacement, in so far as there is no other residential accommodation available to them on reasonable terms: see the Civil Aviation Act 1982 s 52(2). As to the re-housing of persons displaced from land see also the Land Compensation Act 1973 ss 39-43 (ss 39, 41-43 as amended); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 853-856.

6 See the Civil Aviation Act 1982 s 52(3) (amended by the Transport Act 2000 Sch 4 para 10).

7 As to the CAA see PARA 50 et seq.

8 As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

9 See the Civil Aviation Act 1982 s 52(1)(c), (2)(a) (s 52(2)(a) as amended: see note 5). Section 52 applies in relation to any relevant airport operator as it applies to the CAA: see the Airports Act 1986 s 59(3), (4).

10 As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

11 See the Civil Aviation Act 1982 s 52(1)(ca) (added by the Transport Act 2000 Sch 4 paras 1, 10); and the Civil Aviation Act 1982 s 52(2)(a) (as amended: see note 5).

12 le in pursuance of an order made under the Civil Aviation Act 1982 s 46(1): see PARA 199.

13 See the Civil Aviation Act 1982 s 52(1)(d). Where the order under s 46(1) (see note 12; and PARA 199) was made in respect of the Secretary of State or Eurocontrol, the duty to secure the provision of accommodation falls on the Secretary of State (see s 52(2)(b)); and in any other case, the duty to secure the provision of accommodation falls on the person in respect of whom the order was made (see s 52(2)(c)). As to Eurocontrol see PARA 23.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(ix) Miscellaneous Provisions as to Land/222. Consecrated land and burial grounds.

(ix) Miscellaneous Provisions as to Land

222. Consecrated land and burial grounds.

Certain provisions of the Town and Country Planning Act 1990¹ are applied in relation to land acquired by the Secretary of State², the Civil Aviation Authority ('CAA')³, a relevant airport operator⁴ or an air traffic services licence holder⁵, so as to allow them or anyone acting on their behalf to use the land for any purpose for which they acquired it and in any manner, whether or not involving the erection of buildings or the carrying out of work, even though the land or part of it consists of consecrated land or a burial ground, and notwithstanding any obligation or restriction imposed under ecclesiastical law or otherwise as respects such land⁶.

1 See the Town and Country Planning Act 1990 ss 238-240: see **CREMATION AND BURIAL** vol 10 (Reissue) PARA 1170; **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARAS 956-958.

2 As to the Secretary of State see PARA 33.

3 As to the CAA see PARA 50 et seq.

4 As to the meaning of 'airport operator' see PARA 183 note 4; and as to the meaning of 'relevant airport operator' see PARA 189 note 1.

5 As to the meaning of 'licence holder' see PARA 188 note 1. As to the licensing of air traffic services see PARA 139 et seq.

6 See the Civil Aviation Act 1982 s 54 (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 55(4); and the Transport Act 2000 s 36, Sch 4 paras 1, 12); and the Airports Act 1986 s 59(6) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 73(1)).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(ix) Miscellaneous Provisions as to Land/223. Registration of orders as local land charges.

223. Registration of orders as local land charges.

Orders providing for the creation of easements over land or of other rights in or in relation to land¹, prohibiting or restricting the use of any land as a place for the arrival and departure of civil aircraft², or declaring areas of land to be subject to control by directions³, and any direction given under such an order⁴, are local land charges⁵. As such, they must be registered in the register of local land charges kept for the area in which the land affected or any part of it is situated⁶.

1 le orders under the Civil Aviation Act 1982 s 44: see PARA 191 et seq.

2 le orders under the Civil Aviation Act 1982 s 45: see PARA 209 et seq. Orders imposing prohibitions or restrictions on the use of water are not registrable: see s 55(1)(b)(ii).

3 le orders under the Civil Aviation Act 1982 s 46(1): see PARA 199.

4 As to the directions that may be given see PARA 201.

5 See the Civil Aviation Act 1982 s 55(1)(b). As to local land charges see **LAND CHARGES**.

Rights in or in relation to land granted or agreed to be granted on or after 25 October 1968 and enforceable by virtue of s 43 are also local land charges: see s 55(1)(a); and PARAS 186-188.

6 As to registration of local land charges see the Local Land Charges Act 1975; the Local Land Charges Rules 1977, SI 1977/985; and **LAND CHARGES**. Failure to register does not affect the enforceability of the charge but a purchaser may be entitled to compensation: see the Local Land Charges Act 1975 s 10; and **LAND CHARGES**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(ix) Miscellaneous Provisions as to Land/224. Service of notices.

224. Service of notices.

Any notice required to be served upon a person for the purposes of provisions of the Civil Aviation Act 1982 relating to land and aerodromes¹ may be served upon that person² either by delivering it to him, or by leaving it at his proper address³, or by sending it by registered post or by the recorded delivery service⁴.

If it is not practicable after reasonable inquiry to ascertain the name or address of any owner⁵, lessee or occupier of land on whom a notice is to be served, it may be served by addressing it to him by the description 'owner', 'lessee' or 'occupier' of the land (describing it), and by delivering it to some person on the premises, or, if there is no such person, by affixing it, or a copy of it, to some conspicuous part of the premises⁶.

1 le any provision of the Civil Aviation Act 1982 Pt II (ss 25-59), except s 42 (see PARA 187) and so much of s 50 (see PARA 214) as relates to the service of a notice otherwise than by the Secretary of State: s 56(7). As to the Secretary of State see PARA 33.

2 Any notice required to be served upon an incorporated company or body is duly served if it is served upon its secretary or clerk: Civil Aviation Act 1982 s 56(2). As to service on a company see the Companies Act 1985 s 725; and **COMPANIES** vol 14 (2009) PARA 671.

3 A person's proper address is, in the case of the secretary or clerk of any incorporated company or body, that of the registered or principal office of the company or body and, in any other case, the person's last known address: Civil Aviation Act 1982 s 56(3). Where, however, the person has furnished an address for service, that address is his proper address: s 56(3).

4 See the Civil Aviation Act 1982 s 56(1).

5 For these purposes, 'owner' means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion, and includes also a person holding or entitled to the rents and profits under a lease or agreement, the unexpired term of which exceeds three years: Civil Aviation Act 1982 s 56(8).

6 Civil Aviation Act 1982 s 56(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (2) ACQUISITION AND CONTROL OF LAND/(ix) Miscellaneous Provisions as to Land/225. Exemption from stamp duty.

225. Exemption from stamp duty.

Stamp duty¹ is not payable on any conveyance of land or on any instrument creating or disposing of any right in or in relation to land, if the Secretary of State² is a party to the conveyance or instrument and certifies that the duty would fall to be defrayed as part of his expenses³, provided that such expenses are connected to the performance of his civil aviation functions or, in the case of a conveyance of land, the conveyance is made for purposes relating to the establishment of aerodromes⁴.

1 As to stamp duty see **STAMP DUTIES AND STAMP DUTY RESERVE TAX**.

2 As to the Secretary of State see PARA 33.

3 See the Civil Aviation Act 1982 s 59(2).

4 See the Civil Aviation Act 1982 s 59(2)(a), (b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(3) LICENSING OF AERODROMES/226. Licensed aerodromes.

(3) LICENSING OF AERODROMES

226. Licensed aerodromes.

The Civil Aviation Authority ('CAA')¹ may license any aerodrome² in the United Kingdom³ which is not a government aerodrome⁴, for the take-off and landing⁵ of aircraft⁶ flying for the purpose of the public transport⁷ of passengers⁸, instruction in flying⁹, or flying tests in respect of the grant of a pilot's licence or the inclusion of a rating in a licence¹⁰. Aircraft engaged on such flights may also take off and land at government aerodromes notified as available to such aircraft or for which a particular permission was given¹¹.

The CAA may grant an aerodrome licence to any applicant where it is satisfied that his competence can secure that the aerodrome and its airspace are safe for use by aircraft, that the aerodrome itself is safe for such use, and that the aerodrome manual submitted is adequate¹². The licence may be granted subject to such conditions as the CAA thinks fit¹³ and it remains in force for the period specified in it, subject to the CAA's powers of revocation, suspension or variation¹⁴.

The licensee of the aerodrome must give any information as to the terms of the licence to any person requesting it¹⁵. He may not cause or permit any condition of the licence to be contravened in relation to an aircraft engaged on such flights as are described above, although the licence does not cease to be valid by reason only of the contravention¹⁶.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'aerodrome' see PARA 175.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 As to the meaning of 'government aerodrome' see PARA 178.

5 'To land', in relation to aircraft, includes alighting on the water: Air Navigation Order 2005, SI 2005/1970, art 155(1).

6 The specific purposes for which aircraft may take off or land depend on whether the aircraft is an aeroplane of which the maximum total weight authorised exceeds 2,730 kg, an aeroplane of which the maximum total weight authorised does not exceed 2,730 kg, a helicopter, a gyroplane or a glider: see the Air Navigation Order 2005, SI 2005/1970, art 126(2)(a)-(d). As to the meaning of 'maximum total weight authorised' see PARA 363 note 9.

7 As to public transport see PARA 363.

8 As to the meaning of 'passenger' see PARA 362 note 5.

9 As to instruction in flying see PARA 454.

10 See the Air Navigation Order 2005, SI 2005/1970, arts 126(1)(a), (2), 128(1). 'Licensed aerodrome' means an aerodrome licensed under the Air Navigation Order 2005, SI 2005/1970: art 155(1). As to pilots' licences and ratings see Sch 14; and PARA 444 et seq.

11 See the Air Navigation Order 2005, SI 2005/1970, art 126(1)(b).

12 See the Air Navigation Order 2005, SI 2005/1970, art 128(1). Submission of an aerodrome manual is compulsory: art 128(6). Provision as to the content and submission of such manuals is made by art 128(7)-(10), Sch 13. In reaching its decision as to an applicant's competence, the CAA must examine his previous conduct and experience, his equipment, organisation, staffing, maintenance and other arrangements and, as regards

the aerodrome, must pay particular attention to the physical characteristics of the aerodrome and of its surroundings: see art 128(1).

13 As to a public use condition see PARA 227.

14 See the Air Navigation Order 2005, SI 2005/1970, art 128(1A) (added by SI 2007/3467). As to the CAA's powers to revoke, suspend or vary a licence see the Air Navigation Order 2005, SI 2005/1970, art 92; and PARA 490.

15 Air Navigation Order 2005, SI 2005/1970, art 128(3)(a).

16 Air Navigation Order 2005, SI 2005/1970, art 128(4). Contravention of this provision is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale: see art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(3) LICENSING OF AERODROMES/227. Public use aerodrome licence.

227. Public use aerodrome licence.

When applying for an aerodrome licence¹, an applicant may request, or the Civil Aviation Authority ('CAA')² may decide to grant, a licence, known as a 'licence for public use', which is similar to an ordinary aerodrome licence save that it is subject to the special condition that the aerodrome must, at all times when it is available for the take-off or landing³ of aircraft, be so available to all persons on equal terms and conditions⁴.

During the period of validity of the licence, an ordinary aerodrome licence may be substituted for a public use aerodrome licence and a public use aerodrome licence for an ordinary aerodrome licence⁵. The substitution is made by the CAA on the application of the licensee or, in the case of a public use aerodrome licence to be replaced by an ordinary aerodrome licence, on the application of another aerodrome licensee, an air operator's certificate holder⁶, the holder of any air transport licence or any operating licence⁷, the holder of an air transport or route licence⁸, or, exceptionally, an aircraft operator⁹. The CAA may itself propose the substitution of a public use aerodrome licence for an ordinary aerodrome licence¹⁰.

1 As to the licensing of aerodromes see PARA 226.

2 As to the CAA see PARA 50 et seq.

3 As to the meaning of 'to land' see PARA 226 note 5.

4 Air Navigation Order 2005, SI 2005/1970, art 128(2). Contravention of this provision is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale: see art 148(4). As to the standard scale see PARA 50 note 8.

5 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, regs 10-14 (regs 10, 13 amended by SI 1992/2992).

6 As to an air operator's certificate see PARAS 99-100.

7 As to operating licences see PARAS 101-105.

8 As to air transport and route licensing see PARAS 106-107.

9 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 10(1), (2) (reg 10(2) amended by SI 1992/2992).

10 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, regs 6(10)(b), 10(4).

UPDATE

227 Public use aerodrome licence

NOTE 5--SI 1991/1672 reg 14 amended: SI 2008/2683.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(i) Permission to Levy Airport Charges/228. Aerodromes subject to economic regulation.

(4) ECONOMIC REGULATION OF AERODROMES

(i) Permission to Levy Airport Charges

228. Aerodromes subject to economic regulation.

Airports¹ whose annual turnover² of business³ in at least two of the last three financial years⁴ exceeded £1 million⁵ are subject to economic regulation by the Civil Aviation Authority ('CAA')⁶. Government aerodromes⁷ are not subject to economic regulation⁸, nor are aerodromes which have been exempted by determination of the Secretary of State (their annual turnover having fallen below the relevant sum in two of the last three financial years)⁹.

Where an aerodrome is subject to economic regulation, no airport charges¹⁰ may be levied there unless they are levied by the airport operator to whom a permission to levy airport charges has been granted by the CAA and while the permission is in force in respect of that airport¹¹.

1 'Airport' means the aggregate of the land, buildings and works comprised in an aerodrome within the meaning of the Civil Aviation Act 1982: Airports Act 1986 s 82(1). As to the meaning of 'aerodrome' see PARA 175.

2 'Annual turnover', in relation to business carried on at an airport by the airport operator, means the aggregate, as stated or otherwise shown in the accounts of the business, of all sums received in the course of the business during a financial year, including grants from any public or local authority but excluding capital receipts and loans made by any person: Airports Act 1986 s 14(2); definition applied by s 37(9). As to the meaning of 'airport operator' see PARA 183 note 4.

3 The reference to the business carried on at an airport by the airport operator must, in a case where the person for the time being having the management of the airport has not had its management for the whole or any part of any period relevant for the purposes of the Airports Act 1986 s 37, be construed as including a reference to the business carried on there by any other person who had the management of the airport for the whole or any part of that period: s 82(3).

4 'Financial year' means a period of 12 months ending with 31 March: Airports Act 1986 s 14(2); definition applied by s 37(9).

5 The relevant sum specified by the Airports Act 1986 s 14(1): see s 37(9). This sum may be increased by the Secretary of State: see ss 14(3), 37(9). As to the Secretary of State see PARA 33.

6 Airports Act 1986 s 37(3); and see also s 37(10). As to the CAA see PARA 50 et seq. The Airports Act 1986 imposes a restriction on the disclosure of information with respect to any particular business which has been obtained under the Act (s 74(1)); disclosure of information in contravention of that restriction is an offence, punishable on summary conviction by a fine not exceeding the statutory maximum, and on conviction on indictment by imprisonment for a maximum term of two years or a fine or both (s 74(5)). As to the statutory maximum see PARA 43 note 12. As to exceptions to the restriction see s 74(2)-(4) (s 74(2) amended by virtue of the Utilities Act 2000 s 3(2); and by the Enterprise Act 2002 s 278(1), Sch 25 para 14; the Water Act 2003 s 101(1), Sch 7 Pt 2 para 24; the Railways and Transport Safety Act 2003 s 16(5), Sch 2 Pt 2 para 19; SI 1988/915; SI 1992/231; and SI 1996/275; the Airports Act 1986 s 74(3) amended by the Consumer Protection Act 1987 s 48, Sch 4 para 10, Sch 5; the Electricity Act 1989 s 112(1), Sch 16 para 33; the Water Act 1989 s 190, Sch 25 para 76; the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 44; the Railways Act 1993 s 152, Sch 12 para 23; the Enterprise Act 2002 Sch 25 para 14; the Water Act 2003 Sch 7 Pt 2 para 24; the Railways Act 2005 s 59(1), Sch 12 para 9; SI 1988/915; SI 1999/506; SI 1992/231; SI 1994/426; SI 1996/275; SI 1996/2199; SI 2000/311; SI 2001/4050; and SI 2006/3336).

7 As to government aerodromes see PARA 178.

8 Airports Act 1986 s 37(4)(a), (b).

9 Airports Act 1986 s 37(4)(c), (5). Such a determination is made by the Secretary of State either of his own motion or on the application of the airport operator (s 37(6)); it does not preclude the airport from being subjected to economic regulation once more at a later date (s 37(7)(a)), nor does it affect any rights or liabilities accrued before the determination is made (s 37(7)(b)).

10 'Airport charges', in relation to an airport, means (1) charges levied on operators of aircraft in connection with the landing, parking or taking off of aircraft at an airport, including charges that are to any extent determined by reference to the number of passengers on board the aircraft, but excluding charges payable by virtue of the Transport Act 2000 s 73 (see PARA 589) and penalties payable by virtue of the Civil Aviation Act 1982 s 38C (see PARA 261) or s 78A (see PARA 262); and (2) charges levied on aircraft passengers in connection with their arrival at, or departure from, the airport by air: Airports Act 1986 s 36(1) (amended by the Transport Act 2000 s 97, Sch 8 Pt III para 10; and the Civil Aviation Act 2006 s 13, Sch 2 para 5). 'Operator', in relation to an aircraft, means the person for the time being having the management of the aircraft: Airports Act 1986 s 82(1).

11 Airports Act 1986 s 37(1). As to the grant by the CAA of a permission to levy airport charges see the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544; and PARA 229. If a person levies airport charges in contravention of the Airports Act 1986 s 37(1), he is not guilty of any offence by reason only of that contravention but he may not claim the airport charges so levied and any airport charges paid to him are recoverable from him: s 37(8).

UPDATE

228 Aerodromes subject to economic regulation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

TEXT AND NOTE 6--Airports Act 1986 s 74(3) further amended: SI 2008/1277.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(i) Permission to Levy Airport Charges/229. Grant of permission to levy airport charges.

229. Grant of permission to levy airport charges.

When an airport¹ is due to become subject to economic regulation², the airport operator³ must, within the nine months preceding that time⁴, apply to the Civil Aviation Authority ('CAA')⁵ for the grant in respect of the airport of a permission to levy airport charges⁶.

The permission is deemed to be in force from the date of the application to the CAA for its grant or from the day when the airport becomes subject to economic regulation, whichever comes later⁷. The permission enters into force on the day it is granted⁸ and remains so until it is revoked⁹ or the airport ceases to be subject to economic regulation by determination of the Secretary of State¹⁰.

The permission is granted when all the formalities are fulfilled, including the production of documents and the furnishing of accounts, estimates or other information further required by the CAA and relevant to the imposition of any condition on the permission¹¹.

1 As to the meaning of 'airport' see PARA 228 note 1.

2 As to aerodromes subject to economic regulation see PARA 228.

3 As to the meaning of 'airport operator' see PARA 183 note 4.

4 See the Airports Act 1986 s 37(3).

5 As to the CAA see PARA 50 et seq.

6 Airports Act 1986 s 38(1). The application must be in writing, contain all particulars as set by notice by the CAA and be accompanied by a fee: see s 38(2). The CAA must publicise the application and as much of its contents as it thinks fit: see the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 7(1).

7 See the Airports Act 1986 s 38(3).

8 See the Airports Act 1986 s 38(7)(a). Where the date when the airport becomes subject to economic regulation is later than the date when the permission is granted, the permission enters into force on the later day: s 38(7)(b).

9 Airports Act 1986 s 38(7). The permission may be revoked for contravention of a compliance order: see s 49(9); and PARA 247.

10 Airports Act 1986 s 38(7). As to an airport ceasing to be subject to economic regulation see s 37(5); and PARA 228. As to the Secretary of State see PARA 33.

11 See the Airports Act 1986 s 38(4). An applicant who fails to comply with any requirement made by the CAA may be given further time to fulfil his obligation but his application must be refused if he cannot comply within the extra time: s 38(5). The grant or refusal of the application must be notified to the applicant by the CAA: see s 38(6); and the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 5.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(ii) Conditions/230. Imposition of conditions.

(ii) Conditions

230. Imposition of conditions.

Where an airport¹ is subject to economic regulation² and has been granted a permission to levy airport charges³, the Civil Aviation Authority ('CAA')⁴ must impose conditions known as mandatory conditions⁵ relating to the accounts of the airport operator⁶ and to the levying of airport charges where the airport has been designated for the purpose by order of the Secretary of State⁷. The CAA may also impose conditions on other airports at its discretion⁸.

In imposing conditions the objectives of the CAA are, taking into account such international obligations of the United Kingdom⁹ as the Secretary of State may have notified to the CAA¹⁰ (1) to further the reasonable interests of users of airports within the United Kingdom; (2) to promote the efficient, economic and profitable operation of such airports; (3) to encourage investments in new facilities at airports in time to satisfy anticipated demands by the users of such airports; and (4) to impose the minimum restrictions that are consistent with the performance by the CAA of its functions¹¹.

The airport operator must comply with mandatory or discretionary conditions imposed with a permission to levy airport charges¹².

1 As to the meaning of 'airport' see PARA 228 note 1.

2 As to aerodromes subject to economic regulation see PARA 228.

3 As to the meaning of 'airport charges' see PARA 228 note 10. As to permission to levy airport charges see PARA 228.

4 As to the CAA see PARA 50 et seq.

5 See further PARA 231 et seq.

6 As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see the Airports Act 1986 s 55, Sch 1 paras 1-4.

7 See the Airports Act 1986 s 40(1); and PARA 231. Nothing requires or authorises the CAA to impose or modify conditions otherwise than on granting a permission to levy airport charges or while such a permission is in force: s 39(5). As to the reference of proposed conditions to the Competition Commission and the imposition of conditions following the Commission's report see PARA 237 et seq. As to the duration and modification of conditions see PARA 236. As to the enforcement of the duty to comply with the conditions see PARA 243 et seq.

8 See the Airports Act 1986 s 41(1); and PARA 234.

9 As to the international obligations of the United Kingdom see PARA 1 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

10 See the Airports Act 1986 s 39(3).

11 Airports Act 1986 s 39(2). 'Functions' includes powers and duties: s 82(1).

12 Airports Act 1986 s 39(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(ii) Conditions/231. Mandatory conditions.

231. Mandatory conditions.

Where an airport¹ is designated for the purpose², the Civil Aviation Authority ('CAA')³ must impose conditions (known as 'mandatory conditions') on the airport operator⁴ either when it grants the permission to levy airport charges⁵ or within the period of nine months following the designation if this occurred after the grant of the permission⁶. The conditions concern the transparency of accounts⁷ and the levying of airport charges⁸.

1 As to the meaning of 'airport' see PARA 228 note 1.

2 le designated for the purpose of the Airports Act 1986 s 40 by an order of the Secretary of State: s 40(1). Gatwick Airport (London), Heathrow Airport (London), Manchester International Airport and Stansted Airport (London) have been designated for this purpose: see the Economic Regulation of Airports (Designation) Order 1986, SI 1986/1502. As to the Secretary of State see PARA 33. The Secretary of State may also designate classes of airports by reference to their annual turnover or any other matter: Airports Act 1986 s 40(10). At the date at which this volume states the law no such classes of airport had been designated.

3 As to the CAA see PARA 50 et seq.

4 As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see the Airports Act 1986 s 55, Sch 1 paras 1, 3.

5 Airports Act 1986 s 40(1)(a). As to the meaning of 'airport charges' see PARA 228 note 10. As to permission to levy airport charges see PARA 229.

6 Airports Act 1986 s 40(1)(b). The CAA must serve on the airport operator a notice containing the conditions which it intends to impose; and must make its decision within two months after considering any representation which the airport operator may have made: Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 8. The same rules apply where the CAA wishes to modify the conditions: reg 8.

As to the reference of proposed conditions to the Competition Commission and the imposition of conditions following the Commission's report see PARA 237 et seq. As to the duration and modification of conditions see PARA 236. As to the enforcement of the duty to comply with the conditions see PARA 243 et seq.

7 See PARA 232.

8 See PARA 233.

UPDATE

231 Mandatory conditions

NOTE 2--Manchester International Airport de-designated: SI 1986/1502 (amended by SI 2008/2702).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(ii) Conditions/232. Mandatory conditions as to accounts.

232. Mandatory conditions as to accounts.

The mandatory conditions as to accounts¹ require that the accounts disclose all subsidies relating to operational activities² carried on at the airport³ and furnished either by a third party⁴ or by the operator himself out of funds attributable to other activities⁵. The accounts must also show under different headings the aggregate income and expenditure attributable to the levying of the airport charges⁶, to the operational activities taken into account in fixing the airport charges⁷, and to any business carried on by the airport operator at other airports which he also manages⁸.

Where accounts are not required to be delivered to the registrar of companies⁹, the Civil Aviation Authority ('CAA')¹⁰ may impose such conditions as it thinks appropriate as regards the publication of those accounts¹¹.

1 See PARA 231. For these purposes, a reference to the accounts of the airport operator is a reference to accounts delivered to the registrar of companies in accordance with the Companies Act 1985: Airports Act 1986 s 40(2). As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see s 55, Sch 1 paras 1, 3. As to the delivery of company accounts to the registrar see the Companies Act 1985 s 242; and **COMPANIES** vol 15 (2009) PARA 869 et seq.

2 As to the meaning of 'operational activities' see PARA 266 note 9; definition applied by the Airports Act 1986 s 36(1). Cf the meaning of 'relevant activities' which is more restrictive: see s 36(1); and PARA 234 note 9.

3 As to the meaning of 'airport' see PARA 228 note 1.

4 Airports Act 1986 s 40(2)(a)(i). The identity of the third party must be indicated, and the subsidy may take the form of a loan on non-commercial terms or otherwise: s 40(2)(a)(i).

5 Airports Act 1986 s 40(2)(a)(ii). As to the reference of proposed conditions to the Competition Commission and the imposition of conditions following the Commission's report see PARA 237 et seq. As to the duration and modification of conditions see PARA 236. As to the enforcement of the duty to comply with the conditions see PARA 243 et seq.

6 Airports Act 1986 s 40(2)(a)(iii). As to the meaning of 'airport charges' see PARA 228 note 10. As to permission to levy airport charges see PARA 229.

7 Airports Act 1986 s 40(2)(a)(iv). The operational activities may be carried out either by the operator or by a third party: s 40(2)(a)(iv).

8 Airports Act 1986 s 40(2)(a)(v).

9 This will generally be the case in relation to overseas companies incorporated in the Channel Islands or the Isle of Man: see the Companies Act 1985 s 699.

10 As to the CAA see PARA 50 et seq.

11 Airports Act 1986 s 40(2)(b).

UPDATE

232 Mandatory conditions as to accounts

TEXT AND NOTES 9-11--1986 Act s 40(2)(b) amended to take account of the coming into force of the Companies Act 2006: SI 2008/948.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(ii) Conditions/233. Mandatory conditions as to airport charges.

233. Mandatory conditions as to airport charges.

The mandatory conditions as to airport charges¹ which may be imposed by the Civil Aviation Authority ('CAA')² regulate the maximum amounts that the airport operator³ may levy by way of airport charges over a period of five years⁴. The maximum limit may be fixed by reference to the aggregate of amounts so levied at the airport⁵ and at any other airport which together serve the same area and are either managed by the same airport operator or owned by the same person or group of companies and operated as a group of airports⁶. Unless the Secretary of State⁷ otherwise directs, the CAA cannot impose such conditions until a reference has been made to the Competition Commission⁸ and the Commission's report has been received⁹.

The conditions may provide for an overall limit or for different limits to apply to different categories of airport charges or for a combination of such limits¹⁰ or for different limits to apply in relation to different periods of time falling within the five-year period¹¹. The conditions may also operate to impose restrictions in increases, or to require reductions, in such airport charges¹².

The conditions are reviewed and prolonged, with or without modification¹³, at the end of the five-year period¹⁴.

1 See PARA 231. As to the meaning of 'airport charges' see PARA 228 note 10. As to permission to levy airport charges see PARA 229.

2 As to the CAA see PARA 50 et seq.

3 As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see the Airports Act 1986 s 55, Sch 1 paras 1, 2.

4 Airports Act 1986 s 40(3). The period begins on a date specified by the CAA, being a date not more than 12 months after the date on which the conditions were imposed: s 40(3). The CAA may extend the five-year period by no more than one year, after consultation with the operator: see s 40(7).

As to the reference of proposed conditions to the Competition Commission and the imposition of conditions following the Commission's report see PARA 237 et seq. As to the duration and modification of conditions see PARA 236. As to the enforcement of the duty to comply with the conditions see PARA 243 et seq.

5 As to the meaning of 'airport' see PARA 228 note 1.

6 See the Airports Act 1986 s 52(1), (2). The reference in the text to airports serving the same area in the United Kingdom is a reference to airports in the case of which a substantial number of the passengers departing from, or arriving at, the airports by air (other than those interrupting their flights there or transferring from one flight to another) have as their original points of departure, or (as the case may be) as their ultimate destinations, places situated within the same area in the United Kingdom: ss 31(6), 52(2). As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 As to the Secretary of State see PARA 33.

8 Airports Act 1986 s 40(9). As to references to the Competition Commission see note 4; and PARA 237 et seq.

9 See the Airports Act 1986 s 46(1).

10 See the Airports Act 1986 s 40(5)(a).

11 Airports Act 1986 s 40(5)(c). Where the CAA determines to extend the period (see note 4) in such a case, the limit applying to the last of those periods applies to the additional period for which the conditions are to remain in force, unless otherwise agreed by the CAA and the operator: s 40(8).

12 Airports Act 1986 s 40(5)(b).

13 'Modifications' includes additions, omissions and amendments: Airports Act 1986 s 82(1).

14 See the Airports Act 1986 s 40(4). As to the modification of conditions see PARA 236. Conditions may not be modified otherwise than in pursuance of s 40(4) save with the agreement of the airport operator: s 40(6). Reference to the Competition Commission is required before the CAA may modify the conditions: s 40(9). The provisions described in the text and notes 7-12 apply to the making of such modifications as they apply to the imposition of conditions: see s 40(5), (8), (9).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(ii) Conditions/234. Discretionary conditions.

234. Discretionary conditions.

The Civil Aviation Authority ('CAA')¹ may impose on a non-designated airport² subject to economic regulation³ the same conditions regarding accounts as are mandatory for designated airports⁴, either at the time of granting a permission to levy airport charges⁵ or later while the permission is in force⁶.

The CAA may also impose such conditions as it considers appropriate, either at the time of granting a permission to levy airport charges or later, on an airport, whether or not it has been designated, if the airport operator⁷ is pursuing a course of conduct the adverse effects of which the CAA wishes to remedy or prevent⁸. The conduct to which the CAA may object is:

- 156 (1) the adoption, in relation to the airport operator's relevant activities⁹, of trade practices or pricing policies which unreasonably discriminate against any class of users, or particular users of the airport, or which unfairly exploit his bargaining position relative to airport users generally¹⁰;
- 157 (2) the adoption of practices which unreasonably discriminate against persons applying for, or granted, rights to carry out relevant activities at the airport or which unfairly exploit the airport operator's bargaining position relative to grantees of such rights¹¹;
- 158 (3) the adoption of practices which unreasonably limit the number of such rights that are granted¹²; or
- 159 (4) the fixing of airport charges at levels insufficient to cover the costs to which they relate, or at artificially low levels¹³, and which thus materially harm, or are intended so to harm, the business of an operator at any other airport in the United Kingdom¹⁴.

1 As to the CAA see PARA 50 et seq. As to the role of the CAA in imposing discretionary conditions see PARA 235.

2 As to the meaning of 'airport' see PARA 228 note 1. As to the designation of airports see the Airports Act 1986 ss 40, 41(7); and PARA 231.

3 As to aerodromes subject to economic regulation see PARA 228.

4 As to mandatory accounts conditions see PARA 232; and as to mandatory conditions generally see PARAS 230-233.

5 As to the meaning of 'airport charges' see PARA 228 note 10. As to permission to levy airport charges see PARA 229.

6 Airports Act 1986 s 41(1). As to the reference of proposed conditions to the Competition Commission and the imposition of conditions following the Commission's report see PARA 237 et seq. As to the duration and modification of conditions see PARA 236. As to the enforcement of the duty to comply with the conditions see PARA 243 et seq.

7 As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see the Airports Act 1986 s 55, Sch 1 paras 1, 4, 5.

8 See the Airports Act 1986 s 41(2). The power of the CAA to impose conditions under s 41(2) limiting the charges which an airport operator may levy is restricted: see s 42(1). In determining whether and, if so, what conditions should be imposed under s 41(2), the CAA must take into account any advice given to it by the Secretary of State as to practices currently adopted at airports in countries or territories outside the United Kingdom.

Kingdom: see s 42(2)(b), (3). As to the Secretary of State see PARA 33. As to the meaning of 'United Kingdom' see PARA 30 note 1.

9 'Relevant activity' in relation to an airport means the provision at the airport of any services or facilities for the purposes of the landing, taking off or parking of aircraft; the servicing of aircraft (including the supply of fuel); or the handling of passengers or their baggage or of cargo at all stages while on airport premises (including transfer of passengers, baggage or cargo to or from aircraft, but not including the provision of facilities for car parking, for the refreshment of passengers at the airport or for the supply of consumer goods or services there): Airports Act 1986 s 36(1), (2). Cf the meaning of 'operational activities' which is less restrictive: see s 36(1); and PARAS 232 note 2, 266 note 9.

10 Airports Act 1986 s 41(3)(a). In determining whether an airport operator is pursuing a course of conduct within s 41(3)(a), the CAA must take into account any advice given to it by the Secretary of State as to practices currently adopted at airports in countries or territories outside the United Kingdom: see s 42(2)(a), (3).

11 See the Airports Act 1986 s 41(3)(b)(i), (ii).

12 Airports Act 1986 s 41(3)(b)(ii).

13 The reference in the text to artificially low levels is a reference to such levels being significantly lower than they would otherwise have been either:

10 (1) by reason of a subsidy furnished either by a third party to the operator in connection with his business relating to airport operational activities, or by the operator out of funds attributable to other activities, whether by the making of loans on non-commercial terms or otherwise (Airports Act 1986 s 41(4)(a)); or

11 (2) where the airport operator is a company, by reason of any conduct of the company resulting, in the opinion of the CAA, in failure to achieve a reasonable return, or to distribute a reasonable proportion of profits or to reach a level of borrowing appropriate to its equity share capital (s 41(4)(b)).

In determining for these purposes what is reasonable or (as the case may be) appropriate in the case of a company, the CAA must disregard the fact that the relevant conduct on the part of the company was in conformity with any policy for the time being of a person having control over the company, whilst having regard to any circumstances which, in the opinion of the CAA, would affect any company carrying on the business of operating the airport as a commercial undertaking: s 41(5). As to the meaning of 'operational activities' see PARA 266 note 9; definition applied by s 36(1).

14 Airports Act 1986 s 41(3)(c).

UPDATE

234 Discretionary conditions

NOTE 13--Head (2). Airports Act 1986 s 41(4)(b) amended: SI 2009/1941.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(ii) Conditions/235. Role of the Civil Aviation Authority in imposing discretionary conditions.

235. Role of the Civil Aviation Authority in imposing discretionary conditions.

Where the Civil Aviation Authority ('CAA')¹ proposes to impose (or modify²) discretionary accounts conditions³, it must notify the airport operator⁴ of its intentions and consider any representations which the latter may have served on, or made to, the CAA within two months of service of the notice by the CAA, before making the decision whether to impose such conditions⁵.

Where the CAA proposes to make discretionary conditions in respect of the airport operator's course of conduct⁶, it must first investigate the conduct of the operator before deciding whether to impose (or modify) conditions in order to remedy or prevent what the CAA considers may be adverse effects of the course of conduct⁷. Before carrying out the investigation, the CAA must notify the operator of its intention and of its reasons⁸; and after completion of the investigation, the CAA must publish a report stating whether the operator is pursuing an objectionable course of conduct and, if so, what condition it intends to impose (or modify)⁹. Before imposing any such condition, the CAA must notify the operator¹⁰ of the course of conduct which it has investigated and of its proposals¹¹. If the operator objects to the proposals within the prescribed period¹², the CAA must not proceed with the implementation of its proposals but may refer the matter to the Competition Commission¹³.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'modifications' see PARA 233 note 13.

3 As to discretionary accounts conditions see PARA 234.

4 As to the meaning of 'airport operator' see PARA 183 note 4.

5 Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 10. As to the reference of proposed conditions to the Competition Commission and the imposition of conditions following the Commission's report see PARA 237 et seq. As to the duration and modification of conditions see PARA 236. As to the enforcement of the duty to comply with the conditions see PARA 243 et seq.

6 As to the courses of conduct in connection with which the CAA may impose discretionary conditions see the Airports Act 1986 s 41(3); and PARA 234.

7 Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 11(1).

8 Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 11(2)(a). The notice, together with an indication of the matters to be investigated, must be published to attract the attention of any person who may have an interest in the investigation: reg 11(2)(b).

9 Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 11(3). A decision as to the form and content of the report may be taken by a member of the CAA only after consideration of representations made to the CAA in the course of its investigation: reg 11(4).

10 A copy of the notice must also be served on any person who may have adopted the same course of conduct as the operator as a consequence of the latter's practices or policies: see the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 11(6).

11 Airports Act 1986 s 41(6).

12 I.e. the period prescribed in regulations made by the Secretary of State: see the Airports Act 1986 s 36(3). The period of one month has been prescribed: Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 4(c).

13 See the Airports Act 1986 s 41(6). As to references to the Competition Commission see note 5; and PARA 237 et seq. The decision to refer to the Commission may be taken only after consideration of objections made within one month of service of notice by the CAA: see the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, regs 4(c), 11(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(ii) Conditions/236. Duration and modification of conditions.

236. Duration and modification of conditions.

All conditions imposed by the Civil Aviation Authority ('CAA')¹ remain in force for such period or indefinitely as is determined by the CAA at the time of the imposition², save for mandatory airport charges conditions which, by statute, remain in force for five years³. Where a condition is imposed for a limited period, it may be extended⁴. Where a condition is imposed for an unlimited period, the CAA must specify that it is a condition for an unlimited duration⁵.

Mandatory account conditions may at any time be modified⁶ or revoked by the CAA provided in the latter case that they are replaced with further conditions⁷.

Mandatory airport charges conditions may only be modified by the CAA at the end of the statutory five year period, save with the agreement of the airport operator⁸ concerned⁹, and at the end of each succeeding period of five years¹⁰.

Discretionary account conditions imposed on non-designated airports¹¹ may at any time be modified or revoked by the CAA (without obligation of replacement in the latter case)¹².

Discretionary airport charges conditions which have not been imposed in pursuance of a reference to the Competition Commission¹³ may at any time be modified or revoked by the CAA¹⁴. However, where the CAA wishes to modify such conditions in order more effectively to secure the purpose for which they had been made it may not take this course of action where either reference to the Commission is required by reason of the airport operator objecting to the modification¹⁵ or a previous such reference had resulted in a modification of a condition¹⁶.

All conditions made by the CAA after reference to the Commission in respect of the course of conduct of the airport operator may be modified or revoked by the CAA as long as such modification or revocation does not permit the occurrence or recurrence of the adverse effects intended to be remedied or prevented¹⁷.

Provision is also made for the revocation or modification of conditions following monopoly reference or merger reference reports relating to airport operators¹⁸.

1 As to the CAA see PARA 50 et seq. See also PARA 239 note 3.

2 See the Airports Act 1986 s 51(1). As to the notification of the imposition of conditions see the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 5.

3 See the Airports Act 1986 s 40(3). As to mandatory airport charges conditions see PARA 233.

4 See the Airports Act 1986 s 51(2). Notice of the proposed extension and the reasons for it must be served on the operator, who has two months to make representations which must be considered by the CAA before it decides upon the extension: Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986 reg 16. As to notification of the extension see note 2.

5 Airports Act 1986 s 51(1)(b).

6 As to the meaning of 'modifications' see PARA 233 note 13.

7 Airports Act 1986 s 51(3). As to notification of the modification or revocation see note 2. As to the mandatory account conditions see PARA 232.

8 As to the meaning of 'airport operator' see PARA 183 note 4; and see also, in connection with associated companies of airport operators, the Airports Act 1986 s 55, Sch 1 paras 1, 3, 11.

9 See the Airports Act 1986 s 40(6).

10 See the Airports Act 1986 s 40(4), (6). Before making such a modification, the CAA must refer to the Competition Commission unless otherwise directed by the Secretary of State: see s 40(9). As to the mandatory airport charges conditions see PARA 233. As to the Competition Commission (formerly the Monopolies and Mergers Commission) see the Competition Act 1998 Pt I Ch IV (ss 45-49); and **COMPETITION** vol 18 (2009) PARA 9 et seq. As to notification of the modification or revocation see note 2.

11 As to the designated and non-designated airports see PARA 231 note 2.

12 See the Airports Act 1986 s 51(3). As to discretionary account conditions see PARA 234. As to notification of modification or revocation see note 2.

13 As to references to the Competition Commission in respect of discretionary airports charges conditions see PARA 238.

14 See the Airports Act 1986 s 51(4). As to notification of modification or revocation see note 2.

15 See the Airports Act 1986 s 51(4)(a), (5). As to discretionary airport charges conditions see PARA 234.

16 See the Airports Act 1986 s 51(4)(b).

17 Airports Act 1986 s 51(6). As to notification of modification or revocation see note 2.

18 See the Airports Act 1986 s 54 (amended by the Enterprise Act 2002 ss 86(5), 164(2), 278(2), Sch 9 Pt I para 2, Sch 26).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(iii) References to the Competition Commission/237. Ground for reference in relation to mandatory conditions.

(iii) References to the Competition Commission

237. Ground for reference in relation to mandatory conditions.

Before imposing (or modifying¹) any mandatory conditions in respect of airport charges², the Civil Aviation Authority ('CAA')³ must make a reference to the Competition Commission⁴ unless otherwise directed by the Secretary of State⁵.

The Commission is thus requested to investigate and report on a number of questions relating to the maximum amounts to be levied by the airport operator by way of airport charges at the airport over the relevant five year period⁶, to the course of conduct of the airport operator⁷, and to the possibility of remedying or preventing any adverse effect that that course of conduct might have had or might be expected to have⁸. The CAA must give the Commission all the information and assistance possible in order to help it with its investigation, and the Commission must take account of such information for the purpose of carrying out its investigation⁹.

1 As to the meaning of 'modifications' see PARA 233 note 13.

2 As to the meaning of 'airport charges' see PARA 228 note 10. As to permission to levy airport charges see PARA 229. As to the mandatory conditions in respect of airport charges see PARA 233. No reference is required for accounts conditions: see PARA 232.

3 As to the CAA see PARA 50 et seq.

4 As to the Competition Commission (formerly the Monopolies and Mergers Commission) see the Competition Act 1998 Pt I Ch IV (ss 45-49); and **COMPETITION** vol 18 (2009) PARA 9 et seq.

5 Airports Act 1986 ss 36(1), 40(9), 43(1) (s 36(1) amended by SI 1999/506). As to the Secretary of State see PARA 33. For supplementary provision as to the making of references see PARA 239. As to the Commission's report see PARA 240.

6 Airports Act 1986 s 43(1)(a). The CAA may specify in the reference any view that it may have formed as to the appropriate amount and any conditions (or modifications) which implement its view on the maximum amounts: s 44(1)(a)(i), (iv).

7 See the Airports Act 1986 s 43(1)(b), (2)(a). The course of conduct referred to is the one adopted by the airport operator in relation to any airport charges levied by him at the airport, any operational activities carried on by him and relating to the airport, or any granting of rights to third parties to carry on operational activities at the airport: s 43(2)(a). The CAA may specify in the reference any course of conduct which the airport operator may have pursued and has operated, or might operate, against the public interest and any conditions (or modifications) which could remedy or prevent those adverse effects: s 44(1)(a)(ii), (iv). As to such courses of conduct see PARA 234. As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see s 55, Sch 1 paras 1, 6, 7.

8 Airports Act 1986 s 43(1)(b), (2)(b). The CAA may specify in the reference any effect adverse to the public interest caused, or likely to be caused, by an objectionable course of conduct of the airport operator and any conditions (or modifications) which would remedy or prevent those adverse effects: s 44(1)(a)(iii), (iv).

9 See the Airports Act 1986 s 44(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(iii) References to the Competition Commission/238. Ground for reference in relation to discretionary conditions.

238. Ground for reference in relation to discretionary conditions.

Where the Civil Aviation Authority ('CAA')¹ notifies an airport operator² that it proposes to impose (or modify³) conditions in relation to airport charges⁴ to remedy or prevent the adverse effects caused or likely to be caused by his course of conduct⁵ and where the operator objects to the proposals, the CAA must refer the case to the Competition Commission⁶ before implementing its proposals⁷.

The Commission is thus requested to investigate and report on the questions whether the airport operator has, during the last 12 months⁸ pursued a course of conduct which the CAA proposes to change⁹ and if so, whether such conduct operated, or might operate, against the public interest¹⁰ and if so, whether the adverse effects to the public interest which it had or might have could be remedied or prevented by the imposition (or modification) of conditions in relation to the airport¹¹. The CAA may vary the reference by adding or excluding any specified matter¹².

The CAA must give the Commission all information and assistance possible in order to help it with its investigation, and the Commission must take account of such information for the purpose of carrying out of its investigation¹³.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see the Airports Act 1986 s 55, Sch 1 paras 1, 4, 7.

3 As to the meaning of 'modifications' see PARA 233 note 13.

4 As to the meaning of 'airport charges' see PARA 228 note 10. As to permission to levy airport charges see PARA 229.

5 As to the course of conduct of an airport operator see PARA 234.

6 As to the Competition Commission (formerly the Monopolies and Mergers Commission) see the Competition Act 1998 Pt I Ch IV (ss 45-49); and **COMPETITION** vol 18 (2009) PARA 9 et seq.

7 See the Airports Act 1986 ss 36(1), 41(6) (s 36(1) amended by SI 1999/506); and PARAS 234-235. As to the Commission's report see PARA 240. For supplementary provision as to the making of references see PARA 239.

8 See the Airports Act 1986 s 43(6)(b).

9 See the Airports Act 1986 s 43(3)(a); and see notes 10-11.

10 See the Airports Act 1986 s 43(3)(b). The CAA may specify in the reference (or variation) any effects adverse to the public interest which, in its opinion, the relevant course of conduct has had or might have: s 44(1)(b)(i).

11 See the Airports Act 1986 s 43(3)(c). The CAA may specify in the reference (or variation) any conditions (or modifications) by which, in its opinion, the adverse effects of the relevant course of conduct could be remedied or prevented: s 44(1)(b)(ii).

12 Airports Act 1986 s 43(4).

13 See the Airports Act 1986 s 44(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(iii) References to the Competition Commission/239. Supplementary provision as to references to the Competition Commission.

239. Supplementary provision as to references to the Competition Commission.

Where a proposed condition or modification¹ of a condition is referred to the Competition Commission², particulars of the reference, and any variation of it, must be published by the Civil Aviation Authority ('CAA')³ in order to bring it to the attention of persons likely to be affected by it⁴, and copies of the reference (or variation) must be sent to the Secretary of State⁵ and to the airport operator⁶.

Every reference to the Commission⁷ is required to specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference⁸ is to be made, and a report of the Commission on such a reference has no effect, and no action may be taken in relation to it⁹, unless the report is made before the end of the period so specified or such further period (if any) as may be allowed by the CAA¹⁰.

Statutory provisions governing the attendance of witnesses and the production of documents are applied in relation to references to the Commission¹¹. Provision is also made for the defrayment by airport operators of expenses incurred by the Commission in carrying out investigations and reporting on references¹².

1 As to the meaning of 'modifications' see PARA 233 note 13.

2 As to such references see PARAS 237-238. As to the Competition Commission (formerly the Monopolies and Mergers Commission) see the Competition Act 1998 Pt I Ch IV (ss 45-49); and **COMPETITION** vol 18 (2009) PARA 9 et seq.

3 As to the CAA see PARA 50 et seq. Provision is made for the Secretary of State by regulations to co-ordinate the functions of the CAA and the Office of Fair Trading where such functions would otherwise be authorised or required to be performed by the CAA or the Office of Fair Trading in relation to the same matter, and for the purpose of prescribing the procedure to be followed in such cases: see the Airports Act 1986 s 56 (amended by the Competition Act 1998 s 74(1), (3), Sch 12 para 7(5), Sch 14 Pt I; and the Enterprise Act 2000 s 278(1), Sch 25 para 14(1), (5)).

4 Airports Act 1986 s 44(4)(a).

5 As to the Secretary of State see PARA 33.

6 Airports Act 1986 s 44(4)(b). As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see s 55, Sch 1 paras 1, 7.

7 Ie every reference under the Airports Act 1986 s 43: see PARAS 237-238.

8 As to reports see PARA 240.

9 Ie under the Airports Act 1986 s 46: see PARAS 241-242.

10 Airports Act 1986 s 44A(1), (2) (s 44A added by the Enterprise Act 2000 Sch 25 para 14(3)). If it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, the CAA may extend that period by no more than six months (Airports Act 1986 s 44A(3) (as so added)), but no more than one such extension is possible in relation to the same reference (s 44A(4) (as so added)). Where the CAA makes such an extension it must publish the extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it, and must send a copy of what has been so published by it to the airport operator concerned and the Secretary of State: s 44A(5) (as so added). See further **COMPETITION** vol 18 (2009) PARA 172 et seq.

11 The provisions referred to in the text are those of the Enterprise Act 2002 ss 109-116 (applied with modifications by the Airports Act 1986 s 44B (added by the Enterprise Act 2002 Sch 25 para 14(3))).

12 See the Airports Act 1986 s 47; and the Economic Regulation of Airports (Expenses of the Monopolies and Mergers Commission) Regulations 1997, SI 1997/403.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(iii) References to the Competition Commission/240. Report of the Competition Commission.

240. Report of the Competition Commission.

When making its report, the Competition Commission¹ must include definite conclusions on the questions comprised in the reference² and must specify the effects, if any, adverse to the public interest which the course of conduct of the airport operator³ might have occasioned, or might be expected to occasion⁴, as well as conditions or (modifications⁵) which should be imposed to remedy or prevent those adverse effects⁶. The Commission's conclusions relating to the maximum amounts of airport charges⁷ to be levied are made in the form of recommendations⁸.

In determining whether any particular point has operated, or might operate, against the public interest, the Commission must have regard to the relevant objectives of the Civil Aviation Authority ('CAA')⁹. In the case of a matter relating to the grant of rights to a third party¹⁰, the Commission must consider the furtherance of the reasonable interests of the person granted such rights¹¹.

The report is sent to the CAA¹² which forwards copies to the Secretary of State¹³ and to the airport operator concerned before publishing it, subject to any direction given by the Secretary of State as to the exclusion of matter from the report¹⁴.

The contents of the Commission's reports are absolutely privileged for the purposes of the law relating to defamation¹⁵, and the Commission must have regard to certain considerations before disclosing any information¹⁶.

1 As to the Competition Commission (formerly the Monopolies and Mergers Commission) see the Competition Act 1998 Pt I Ch IV (ss 45-49); and **COMPETITION** vol 18 (2009) PARA 9 et seq.

2 Airports Act 1986 s 45(1)(a). The report must also include such account of the Commission's reasons as is expedient for facilitating the proper understanding of the questions and conclusions: s 45(1)(a). As to the grounds for a reference to the Commission see PARAS 237-238.

If a member of a group constituted in connection with the reference concerned in pursuance of the Competition Act 1998 Sch 7 para 15 (see **COMPETITION** vol 18 (2009) PARA 11) disagrees with any conclusions contained in a report made on a reference under the Airports Act 1986 s 43 as the conclusions of the Commission, the report must, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing: s 45(2B) (added by the Enterprise Act 2002 s 278(1), Sch 25 para 14(1), (4)(a)).

3 As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see the Airports Act 1986 s 55, Sch 1 paras 1, 8.

4 Airports Act 1986 s 45(1)(b). As to objectionable courses of conduct pursued by an airport operator see PARA 234.

5 As to the meaning of 'modifications' see PARA 233 note 13.

6 Airports Act 1986 s 45(1)(c).

7 As to the meaning of 'airport charges' see PARA 228 note 10. As to permission to levy airport charges see PARA 229.

8 See the Airports Act 1986 s 45(2). As to the limits or restrictions which the Commission may recommend see s 40(5); and PARA 233. As to the imposition (or modification) of conditions see PARA 241.

9 See the Airports Act 1986 s 43(5)(a). For the relevant objectives see s 39(2); and PARA 230. As to the CAA see PARA 50 et seq. See also PARA 239 note 3.

10 See PARA 232.

11 See the Airports Act 1986 s 43(5)(b).

12 Airports Act 1986 s 45(5). The expenses of the Commission in preparing reports in relation to references made by the CAA are covered by annual charges payable by airport operators: see s 47; and the Economic Regulation of Airports (Expenses of the Competition Commission) Regulations 1997, SI 1997/403 (amended by SI 1999/506).

13 As to the Secretary of State see PARA 33.

14 Airports Act 1986 s 45(6). A direction to exclude any matter from a report may be made if it appears to the Secretary of State that the publication of that matter would be against the public interest or against the commercial interests of any person; the direction must be given within 21 days after he receives the copy of the report: see s 45(7).

15 Airports Act 1986 s 45(4) (substituted by the Enterprise Act 2002 Sch 25 para 14(4)(b)). See further **COMPETITION** vol 18 (2009) PARA 144 et seq. As to absolute privilege see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 94 et seq.

16 The considerations to which the Commission must have regard are: (1) the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest; (2) the need to exclude from disclosure (so far as practicable) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests; and (3) the extent to which the disclosure of the information referred to in head (2) is necessary for the purposes of the report: Airports Act 1986 s 45(4A)-(4D) (added by the Enterprise Act 2002 Sch 25 para 14(4)(b)).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(iii) References to the Competition Commission/241. Imposition of mandatory conditions following report.

241. Imposition of mandatory conditions following report.

The conclusions of the Competition Commission¹ relating to the maximum amounts to be levied by an airport operator² by way of airport charges³ take the form of recommendations as to what those maximum amounts should be⁴. Where the Civil Aviation Authority ('CAA')⁵ is required to impose conditions as to the regulation of such maximum amounts, and a reference to the Commission has been made in pursuance of that requirement⁶, the CAA must impose the conditions when it has received the report of the Commission containing the recommendations⁷. Before imposing the conditions, however, the CAA must have regard to the recommendations made by the Commission⁸.

Where the Commission concludes in its report that the airport operator has pursued, or might pursue, a course of conduct detrimental to the public interest the adverse effects of which could be remedied or prevented by the imposition (or modification⁹) of specified conditions¹⁰, the CAA must impose (or modify) such conditions in respect of the airport as it thinks appropriate¹¹. However, notwithstanding those conclusions, the Secretary of State¹² may direct that the CAA is not to impose (or modify) any such condition¹³.

The CAA must publish a notice of the conditions or modifications which it intends to impose, together with, if the proposed conditions or modifications do not accord with the Commission's report, a statement of the reasons for not implementing that report¹⁴. The notice must be published in such manner as to bring the matter to the attention of persons likely to be affected by the condition¹⁵. A decision as to the form of the conditions or modifications to be imposed may be taken by a member of the CAA only after consideration of written representations served on the CAA within 30 days after the date of the notice¹⁶.

Finally the CAA must publish in like manner particulars of the conditions or modifications which it has imposed and, where they do not accord with the Commission's report as to the maximum airport charges or as to the remedying or prevention of the adverse effects of particular courses of conduct¹⁷, a statement of its reasons for not implementing the report¹⁸.

1 As to the Competition Commission (formerly the Monopolies and Mergers Commission) see the Competition Act 1998 Pt I Ch IV (ss 45-49); and **COMPETITION** vol 18 (2009) PARA 9 et seq.

2 As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see the Airports Act 1986 s 55, Sch 1 paras 1, 8.

3 As to the meaning of 'airport charges' see PARA 228 note 10. As to permission to levy airport charges see PARA 229.

4 Airports Act 1986 s 45(2). Such recommendations may make provision for any of the things referred to in s 40(5) (see PARA 233): s 45(2). As to the regulation of maximum amounts of airport charges, and the requirement for a reference to the Commission as to what those amounts should be, see ss 40(3), (9), 43(1); and PARAS 233, 237.

5 As to the CAA see PARA 50 et seq.

6 See the Airports Act 1986 s 40(9); and PARAS 233, 237.

7 Airports Act 1986 s 46(1).

8 Airports Act 1986 s 46(4).

9 As to the meaning of 'modifications' see PARA 233 note 13.

10 See the Airports Act 1986 s 46(2)(a)-(d).

11 See the Airports Act 1986 s 46(2). A conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of the Competition Act 1998 Sch 7 para 15 (see **COMPETITION** vol 18 (2009) PARA 11); Airports Act 1986 s 45(2A) (added by the Enterprise Act 2002 s 278(1), Sch 25 para 14(1), (4)(a)). At the date at which this volume states the law no such day had been appointed.

12 As to the Secretary of State see PARA 33.

13 See the Airports Act 1986 s 46(3).

14 See the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 12(1).

15 Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 12(2).

16 Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 12(3).

17 See the text and notes 9-13; and PARA 242.

18 Airports Act 1986 s 46(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(iii) References to the Competition Commission/242. Imposition of discretionary conditions following report.

242. Imposition of discretionary conditions following report.

Where the Competition Commission¹ concludes in its report that an airport operator's course of conduct² which is detrimental to the public interest has operated, or might operate, with specified adverse effect which could be remedied or prevented by the imposition (or modification³) of conditions, and where those conditions are specified, the Civil Aviation Authority ('CAA')⁴ must impose such conditions (or modifications) in relation to the relevant airport as it considers appropriate to remedy or prevent those adverse effects⁵. Before making its conditions (or modifications) the CAA must have regard to the conditions (or modifications) suggested in the report of the Commission⁶.

The CAA must publish particulars of the conditions (or modifications) so as to bring the matter to the attention of persons likely to be affected by them and, if they do not accord with those suggested in the report, a statement of its reasons for not implementing the report⁷.

1 As to the Competition Commission (formerly the Monopolies and Mergers Commission) see the Competition Act 1998 Pt I Ch IV (ss 45-49); and **COMPETITION** vol 18 (2009) PARA 9 et seq.

2 As to adverse courses of conduct see PARA 234. As to the meaning of 'airport operator' see PARA 183 note 4.

3 As to the meaning of 'modifications' see PARA 233 note 13.

4 As to the CAA see PARA 50 et seq.

5 Airports Act 1986 s 46(2).

6 Airports Act 1986 s 46(4).

7 See the Airports Act 1986 s 46(5). See also the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 12; and PARA 241 text and notes 14-16.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(iv) Enforcement of Conditions/A. BREACH OF AIRPORT CHARGES CONDITIONS/243. Complaints in respect of breach of conditions.

(iv) Enforcement of Conditions

A. BREACH OF AIRPORT CHARGES CONDITIONS

243. Complaints in respect of breach of conditions.

Either a person on whom any airport charges have been levied¹ by the relevant airport operator², or another airport operator³, may complain to the Civil Aviation Authority ('CAA')⁴ that the relevant airport operator is failing to comply with airport charges conditions imposed in relation to the airport which he operates⁵. The CAA must investigate the complaint unless it considers it frivolous⁶. It may also investigate the complaint of any other person if it thinks fit⁷.

1 A person on whom airport charges have been levied may make a complaint whether the charges have been paid or not: Airports Act 1986 s 48(1)(b)(i). As to the meaning of 'airport charges' see PARA 228 note 10. As to permission to levy airport charges see PARA 229. As to conditions relating to airport charges see PARAS 233-234.

2 As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see the Airports Act 1986 s 55, Sch 1 paras 1, 9.

3 The claim must be that the business carried on by the claimant at another airport in the United Kingdom has been or is being materially harmed by the alleged failure of the relevant airport operator to comply with the conditions which had been imposed: see the Airports Act 1986 s 48(1)(b)(ii).

4 As to the CAA see PARA 50 et seq.

5 Airports Act 1986 s 48(1)(a). As to the imposition of airport charges conditions see PARA 233.

6 Airports Act 1986 s 48(1).

7 Airports Act 1986 s 48(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(iv) Enforcement of Conditions/A. BREACH OF AIRPORT CHARGES CONDITIONS/244. Investigation and hearing of complaints.

244. Investigation and hearing of complaints.

After investigation of a complaint¹, the Civil Aviation Authority ('CAA')² must notify the complainant and the relevant airport operator³ of its findings and either of the action which it proposes to take, or that it intends to take no action⁴.

Either party to the complaint may ask, within 21 days of the notification, to be heard by the CAA who, after hearing the parties, must decide whether there has been, or is, failure on the part of the airport operator to comply with any condition⁵.

The CAA may decide to take no action⁶ or to make a compliance order⁷ or to modify any relevant condition⁸.

1 As to complaints concerning breaches of airport charges conditions see PARA 243. As to such conditions see PARAS 233-234.

2 As to the CAA see PARA 50 et seq.

3 As to the meaning of 'airport operator' see PARA 183 note 4.

4 Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 13(1).

5 The parties must be served 21 days' notice of the date, time and place of the hearing and a copy or summary of the information gathered by the CAA in the investigation, provided it does not harm the public interest or the provider of the information: Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 13(3), (4). The hearing is conducted by one or two members of the CAA, in private, each party appearing in person or being represented, and producing evidence and witnesses as the case may be; and all proceedings are recorded: see reg 13(5)-(8). The decision as to whether conditions have been complied with, and what action is to be taken, is made by those members of the CAA who heard the case; the decision and its reasons must be served on the parties although the statement of reasons may be withheld by the CAA if disclosure of particular commercial or financial information to a relevant person might be to the unwarranted disadvantage of another person by comparison with the advantage which the disclosure might give to the relevant person and the public: reg 13(9).

6 See the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 13(1), (2).

7 See PARAS 246-247.

8 See PARA 245.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(iv) Enforcement of Conditions/A. BREACH OF AIRPORT CHARGES CONDITIONS/245. Modification of conditions.

245. Modification of conditions.

Once the Civil Aviation Authority ('CAA')¹ is satisfied that an airport operator² has, as complained of, failed to comply with an airport charges condition³, it may modify⁴ such a condition, unless it is a mandatory airport charges condition⁵ in which case the agreement of the airport operator is needed⁶. The modification of the condition must not permit any occurrence or recurrence of any effect adverse to the public interest which the Competition Commission⁷ had specified in a report following a reference in respect of the relevant airport⁸.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see the Airports Act 1986 s 55, Sch 1 paras 1, 9.

3 As to complaints concerning breaches of airport charges conditions see PARAS 243-244. As to such conditions see PARAS 233-234.

4 As to the meaning of 'modifications' see PARA 233 note 13.

5 As to mandatory airport charges conditions see PARAS 231, 233.

6 See the Airports Act 1986 s 48(3)(b). This is subject to s 40(6): see PARAS 233, 236.

7 As to the Competition Commission (formerly the Monopolies and Mergers Commission) see the Competition Act 1998 Pt I Ch IV (ss 45-49); and **COMPETITION** vol 18 (2009) PARA 9 et seq.

8 See the Airports Act 1986 s 48(4). As to the meaning of 'airport' see PARA 228 note 1.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(iv) Enforcement of Conditions/A. BREACH OF AIRPORT CHARGES CONDITIONS/246. Compliance order.

246. Compliance order.

Once the Civil Aviation Authority ('CAA')¹ is satisfied that an airport operator² has failed to comply with an airport charges condition³, it may make an order to secure compliance with the condition and to remedy any loss, damage or injustice which the failure to comply caused to any person⁴.

A compliance order requires the relevant airport operator to do, or not to do, certain things specified or described in the order⁵, takes effect as soon as a copy is served on the airport operator unless otherwise specified⁶, and may be revoked by the CAA at any time⁷.

The validity of a compliance order may not be questioned⁸ save by application to the court⁹ on the ground that the order is not within the CAA's powers¹⁰ or that the requirements of the Civil Aviation Authority Regulations 1991¹¹, in respect of the procedure to be followed by the CAA in the performance of its functions, have not been complied with¹². The court may decide to reject the application or quash the order, in its entirety or in part¹³.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see the Airports Act 1986 s 55, Sch 1 paras 1, 2, 9, 10.

3 As to complaints concerning breaches of airport charges conditions see PARAS 243-244. As to such conditions see PARAS 233-234.

4 Airports Act 1986 ss 39(4), 48(3)(a). If the failure to comply has ended and is unlikely to occur again, the order need not contain any compliance provisions and may deal only with remedial matters: s 48(5).

5 Airports Act 1986 s 48(6)(a).

6 See the Airports Act 1986 s 48(6)(b), (7). As to the service of documents see the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 5.

7 Airports Act 1986 s 48(6)(c).

8 Airports Act 1986 s 49(3).

9 Ie, in England and Wales, the High Court: Airports Act 1986 s 49(11).

10 Airports Act 1986 s 49(1)(a). The application must be made within 42 days from the date of service of a copy of the order: s 49(1).

11 Ie the Civil Aviation Authority Regulations 1991, SI 1991/1672, made under the Civil Aviation Act 1982 s 7(2) as extended by the Airports Act 1986 s 36(3).

12 Airports Act 1986 s 49(1)(b). The application must be made within 42 days from the date of service of a copy of the order: s 49(1).

13 See the Airports Act 1986 s 49(2). Procedural irregularities do not invalidate the action taken by the CAA, which may take such necessary steps to remedy any prejudice which it may have caused before curing the irregularity: Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 18.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(iv) Enforcement of Conditions/A. BREACH OF AIRPORT CHARGES CONDITIONS/247. Effect of compliance order.

247. Effect of compliance order.

The obligation to comply with a compliance order¹ is a duty owed by the relevant airport operator² to any person who may be affected by the contravention of the order³. No criminal proceedings may be brought against any person solely on the ground that he contravened the order⁴. Civil proceedings may, however, be brought by an aggrieved party against a person whose breach of the duty to comply caused loss or damage⁵, or against a person who acted in such a manner that it induced a breach of the duty or interfered with the performance of the duty and caused loss or damage⁶. Civil proceedings may also be brought by the Civil Aviation Authority ('CAA')⁷ for an injunction to enforce the compliance order⁸.

Where an aircraft operator contravenes a compliance order and it appears that he is unlikely to comply with it in the immediate future, the CAA may revoke the permission to levy airport charges⁹ which it had granted him in respect of the airport to which the contravention relates¹⁰.

1 As to compliance orders see PARA 246.

2 As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see the Airports Act 1986 s 55, Sch 1 paras 1, 10.

3 Airports Act 1986 s 49(5).

4 See the Airports Act 1986 s 49(4). 'Contravention', in relation to a compliance order, includes any failure to comply with it: s 49(11). This provision also applies to aiding, abetting, counselling, procuring, conspiracy, attempt and incitement: s 49(4). As from a day to be appointed for the abolition of the common law offence of inciting the commission of another offence, the reference in s 49(4) to (or to conduct amounting to) that offence has effect as a reference to (or to conduct amounting to) offences under the Serious Crime Act 2007 Pt 2 (ss 44-67): see the Serious Crime Act 2007 s 63(1), Sch 6 Pt 1 para 10. At the date at which this volume states the law, no such day had been appointed.

5 Airports Act 1986 s 49(6)(a). It is a defence for the person against whom the proceedings are brought to show that he took all reasonable steps and exercised all due diligence to avoid contravening the order: s 49(7).

6 Airports Act 1986 s 49(6)(b). 'Act', in relation to any person, includes any failure to do an act which he is under a duty to do; and 'done' is to be construed accordingly: s 49(11).

7 As to the CAA see PARA 50 et seq.

8 Airports Act 1986 s 49(8).

9 As to the meaning of 'airport charges' see PARA 228 note 10. As to permission to levy airport charges see PARA 229.

10 Airports Act 1986 s 49(9). As to the notice of the CAA's proposal to revoke the permission, the statement of respects in which the operator contravened the compliance order, and the grounds for revoking the permission, see the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 14(1). As to the taking of the decision to revoke see reg 14(2).

Where a permission to levy airport charges is revoked because of an airport operator's contravention, a permission may not be granted in respect of the airport in question so long as the operator remains the airport operator unless it appears to the CAA that he would comply with a condition corresponding to the one whose breach gave rise to the compliance order: Airports Act 1986 s 49(10). As to the decision by the CAA to reinstate a permission see the Civil Aviation Authority (Economic Regulation of Airports) Regulations 1986, SI 1986/1544, reg 14(3).

UPDATE

247 Effect of compliance order

NOTE 4--Appointed day is 1 October 2008: SI 2008/2504.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(4) ECONOMIC REGULATION OF AERODROMES/(iv) Enforcement of Conditions/B. BREACH OF ACCOUNTS CONDITIONS/248. Breach of conditions.

B. BREACH OF ACCOUNTS CONDITIONS

248. Breach of conditions.

Failure to comply with either mandatory or discretionary accounts conditions¹ renders an airport operator² guilty of an offence and liable to a fine³. Whether or not criminal proceedings are brought against an operator, the Civil Aviation Authority ('CAA')⁴ may impose, in the case of the breach of a mandatory condition, new conditions requiring the publication of any matter which the operator should have disclosed⁵. If the operator fails to comply with the new conditions before the end of the period given for compliance he is again guilty of an offence⁶.

In any proceedings, it is a defence for the operator to show that he took all reasonable steps to secure compliance with the condition and, as the case may be, within the time allowed⁷.

1 The failure to comply with a condition in contravention of the Airports Act 1986 s 39(1) (see PARA 230): s 50(5). As to mandatory and discretionary accounts conditions see PARAS 232, 234.

2 As to the meaning of 'airport operator' see PARA 183 note 4. As to the application of these provisions to associated companies of airport operators see the Airports Act 1986 s 55, Sch 1 paras 1, 2, 11.

3 Airports Act 1986 ss 39(4), 50(1). The penalty is, on summary conviction, a fine not exceeding the statutory maximum and, on conviction on indictment, a fine: s 50(1)(a), (b). As to the statutory maximum see PARA 43 note 12. Where an airport operator is not required to deliver his accounts to the registrar of companies in accordance with the Companies Act 1985 (this will generally be the case in relation to overseas companies incorporated in the Channel Islands or the Isle of Man: see s 699), but the CAA has imposed some appropriate conditions with respect to the publication of accounts, if the operator fails to comply with those conditions before the end of the period allowed for compliance, the operator is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale and on a second or subsequent conviction to a fine of one-tenth of the amount corresponding to that level for each day on which the contravention is continued: Airports Act 1986 s 50(2). As to such accounting conditions PARA 232. As to delivery of accounts generally see **COMPANIES** vol 15 (2009) PARA 869 et seq. As to the standard scale see PARA 50 note 8.

4 As to the CAA see PARA 50 et seq.

5 Airports Act 1986 s 50(3).

6 Airports Act 1986 s 50(3). An operator guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and on a second or subsequent conviction to a fine of one-tenth of the amount corresponding to that level for each day on which the contravention is continued: s 50(2), (3).

7 See the Airports Act 1986 s 50(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(i) Duties in relation to Aerodromes/249. Duty not to discriminate.

(5) MANAGEMENT AND OPERATION OF AERODROMES

(i) Duties in relation to Aerodromes

249. Duty not to discriminate.

It is the duty of the Civil Aviation Authority ('CAA')¹ to secure that, at all times when an aerodrome² in the United Kingdom³ which it owns or manages is available for the landing or departure of aircraft, it is so available to all persons on equal terms⁴.

Where an airport is licensed for public use⁵, the principal condition of the licence is that the airport is available to all persons on equal terms and conditions at all times when it is available for the take off or landing⁶ of aircraft⁷. It is the duty of the aerodrome licence holder to notify the times during which the aerodrome is so available to aircraft engaged on flights for the purpose of the public transport⁸ of passengers⁹ or instruction in flying¹⁰. The licence holder may not contravene or cause or permit to be contravened any condition of the licence, including the non-discrimination condition¹¹.

An aerodrome licence holder must take all reasonable steps to secure that the aerodrome and the airspace within which its visual traffic pattern¹² is normally contained are safe at all times for use by aircraft¹³.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'aerodrome' see PARA 175.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 Civil Aviation Act 1982 s 28(4). As to restrictions relating to noise and vibration see s 78; and PARA 259 et seq; and as to the prohibition on discrimination with regard to aircraft see PARA 270.

5 As to licences for public use see PARA 227.

6 As to the meaning of 'to land' see PARA 226 note 5.

7 Air Navigation Order 2005, SI 2005/1970, art 128(2). The right of access may be curtailed by an interim injunction where the aircraft operator has not paid the increased airport charges to which he objects: see *Air Canada v Secretary of State for Trade* [1981] 3 All ER 336. As to the binding effect of reasonable conditions see *British Airports Authority v British Airways Board* (1981) 1 S & B Av R VII/17.

8 As to public transport see PARA 363.

9 As to the meaning of 'passenger' see PARA 362 note 5.

10 Air Navigation Order 2005, SI 2005/1970, art 128(3)(b). As to instruction in flying see PARA 454.

11 See the Air Navigation Order 2005, SI 2005/1970, art 128(4). The offender is liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. However, such a contravention does not invalidate the licence: art 128(4).

12 'Visual traffic pattern' means the aerodrome traffic zone of the aerodrome or, in the case of an aerodrome which is not notified for the purposes of the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 45 (see PARA 564), the airspace which would comprise the aerodrome traffic zone of the aerodrome if it

were so notified: Air Navigation Order 2005, SI 2005/1970, art 128(11)(b); Interpretation Act 1978 s 17(2). As to the meaning of 'aerodrome traffic zone' see PARA 547.

13 Air Navigation Order 2005, SI 2005/1970, art 128(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(i) Duties in relation to Aerodromes/250. Duty to provide aerodrome manual.

250. Duty to provide aerodrome manual.

Upon making an application for an aerodrome licence¹, the applicant must submit to the Civil Aviation Authority ('CAA')² an aerodrome manual for that aerodrome³. An aerodrome manual must contain all such information and instructions as may be necessary to enable the aerodrome operating staff⁴ to perform their duties as such⁵. Every aerodrome licence holder must (1) furnish to the CAA any amendments or additions to the aerodrome manual before or immediately after they come into effect⁶; (2) make such amendments or additions to the manual as the CAA may require for the purpose of ensuring the safe operation of aircraft at the aerodrome or the safety of air navigation⁷; and (3) maintain the manual and make such amendments as may be necessary for the purposes of keeping its contents up to date⁸.

Every aerodrome licence holder must (a) make available to each member of the aerodrome operating staff a copy of the aerodrome manual, or a copy of every part of the aerodrome manual which is relevant to his duties and ensure that each such copy is kept up to date⁹; and (b) take all reasonable steps to secure that each member of the aerodrome operating staff is aware of the contents of every part of the manual which is relevant to his duties as such and undertakes his duties as such in conformity with the relevant provisions of the manual¹⁰.

1 As to the licensing of aerodromes see PARAS 226-227. As to the meaning of 'aerodrome' see PARA 175.

2 As to the CAA see PARA 50 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 128(6).

4 'Aerodrome operating staff' means all persons, whether or not the aerodrome licence holder and whether or not employed by the aerodrome licence holder, whose duties are concerned either with ensuring that the aerodrome and airspace within which its visual traffic pattern is normally contained are safe for use by aircraft, or whose duties require them to have access to the aerodrome manoeuvring area or apron: Air Navigation Order 2005, SI 2005/1970, art 128(11)(a). As to the meaning of 'visual traffic pattern' see PARA 249 note 12. As to the meaning of 'manoeuvring area' see PARA 305 note 3. As to the meaning of 'apron' see PARA 304 note 1.

5 Air Navigation Order 2005, SI 2005/1970, art 128(7). The manual must, in particular, include the information and instructions relating to the matters specified in Sch 13: art 128(7).

6 Air Navigation Order 2005, SI 2005/1970, art 128(8)(a).

7 Air Navigation Order 2005, SI 2005/1970, art 128(8)(b). This requirement is without prejudice to the obligation to furnish amendments or additions to the aerodrome manual to the CAA under art 128(8)(a) (see the text and note 6).

8 Air Navigation Order 2005, SI 2005/1970, art 128(8)(c).

9 Air Navigation Order 2005, SI 2005/1970, art 128(9).

10 Air Navigation Order 2005, SI 2005/1970, art 128(10).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(i) Duties in relation to Aerodromes/251. Secretary of State's duty in relation to aerodromes.

251. Secretary of State's duty in relation to aerodromes.

The Secretary of State¹ must appoint, for each aerodrome² vested in him, an officer to be responsible to him for all the services provided there on his behalf, including signalling services, flying control services and services connected with the execution of works³.

In the management and administration of any aerodrome vested in him, the Secretary of State must make such provision as he thinks necessary to ensure that adequate facilities for consultation are provided for local authorities⁴ in whose area the aerodrome or any part of it is situated, for local authorities whose areas are in that neighbourhood, and for other organisations representing the interests of persons concerned with that locality⁵.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'aerodrome' see PARA 175.

3 Civil Aviation Act 1982 s 25(2).

4 As to the meaning of 'local authority' see PARA 47 note 1.

5 Civil Aviation Act 1982 s 26.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(i) Duties in relation to Aerodromes/252. Civil Aviation Authority's duty in relation to aerodromes.

252. Civil Aviation Authority's duty in relation to aerodromes.

The Civil Aviation Authority ('CAA')¹ is under a duty to provide at the aerodromes² in the United Kingdom³ which it owns or manages⁴ such services and facilities as it considers necessary or desirable for their operation⁵.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'aerodrome' see PARA 175.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 The CAA may also, subject to the written consent of the Secretary of State, appoint another person to manage on its behalf any aerodrome which it owns or manages; and any reference in the Civil Aviation Act 1982 s 28 to an aerodrome managed by the CAA includes a reference to an aerodrome managed by a person appointed by it: s 28(5). As to the Secretary of State see PARA 33.

5 Civil Aviation Act 1982 s 28(3). In carrying out this duty it must have regard to the development of air transport and to efficiency, economy and safety of operation: s 28(3). As to the duty to provide consultation facilities see PARA 253.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(i) Duties in relation to Aerodromes/253. Duty in relation to designated aerodromes.

253. Duty in relation to designated aerodromes.

The person having the management of any designated aerodrome¹ must provide adequate facilities for consultation with:

- 160 (1) users of the aerodrome²;
- 161 (2) any local authority³ (or, if a local authority manages the aerodrome, any other local authority) in whose area the aerodrome or any part of it is situated or whose area is in that neighbourhood⁴; and
- 162 (3) any other organisation representing the interests of persons concerned with that locality⁵,

with respect to any matter concerning the management or administration of the aerodrome which affects their interests⁶.

1 le any aerodrome designated for this purpose by order of the Secretary of State under the Civil Aviation Act 1982 s 35(1) (amended by the Airports Act 1986 s 83(5), Sch 6 Pt I). The order must be made by statutory instrument: see the Civil Aviation Act 1982 s 102(1). As to the aerodromes that have been designated see the Aerodromes (Designation) (Facilities for Consultation) Order 1996, SI 1996/1392 (amended by SI 2002/2421). As to the meaning of 'aerodrome' see PARA 175. As to the Secretary of State see PARA 33.

2 Civil Aviation Act 1982 s 35(2)(a).

3 As to the meaning of 'local authority' see PARA 47 note 1. The reference to any local authority includes in relation to the area of Greater London a reference to the Mayor of London acting on behalf of the Greater London Authority: s 35(3) (added by the Greater London Authority Act 1999 s 372). As to the Mayor of London and the Greater London Authority see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29 et seq.

4 Civil Aviation Act 1982 s 35(2)(b).

5 Civil Aviation Act 1982 s 35(2)(c).

6 Civil Aviation Act 1982 s 35(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(i) Duties in relation to Aerodromes/254. Duty to keep air traffic service equipment maintenance records.

254. Duty to keep air traffic service equipment maintenance records.

The person in charge of any specified air traffic service equipment¹ and any associated apparatus must keep in respect of such equipment or apparatus a record² of any functional tests and flight checks and particulars of any maintenance, repair, overhaul, replacement or modification³, and must preserve such records for a period of one year or such longer period as the Civil Aviation Authority ('CAA')⁴ may in a particular case direct⁵.

The person in charge of air traffic service equipment in respect of which recording apparatus is required to be provided⁶ must:

- 163 (1) ensure that when operated the apparatus is capable of recording and replaying the terms or content of any message or signal transmitted or received by or through it⁷;
- 164 (2) ensure that the apparatus is in operation at all times when the equipment is being used in connection with the provision of a service provided for the purpose of facilitating the navigation of aircraft⁸;
- 165 (3) ensure that each record made by the apparatus is adequately identified⁹;
- 166 (4) not cause or permit that apparatus to be used unless it is approved by the CAA¹⁰; and
- 167 (5) comply with the terms of such an approval¹¹.

The person in charge of any air traffic service equipment must preserve any record made for a period of 30 days from the date on which the terms or content of the message or signal were recorded or for such longer period as the CAA may in a particular case direct¹².

1 As to the meaning of 'air traffic service equipment' see PARA 546 note 26. None of the provisions of the Air Navigation Order 2005, SI 2005/1970, art 125 applies in respect of any air traffic services equipment of which the person solely in charge is the Secretary of State: art 125(13). As to the Secretary of State see PARA 33.

2 'Record' has the same meaning as it has in the Transport Act 2000 s 81(6), which defines 'record' for the purposes of the assessment and payment of charges for air navigation services (see PARA 595 note 4): Air Navigation Order 2005, SI 2005/1970, art 155(1).

3 Air Navigation Order 2005, SI 2005/1970, art 125(1), Sch 12 Pt A para (1). The record may be kept in a legible or a non-legible form so long as the record is capable of being reproduced by the person required to keep the record in a legible form and it must be so reproduced by that person if requested by an authorised person: Sch 15 Pt A para (2). However, in any particular case the CAA may direct that the record is to be kept or to be capable of being reproduced in such a form as it may specify: Sch 15 Pt A para (3). 'Authorised person' means any constable: Air Navigation Order 2005, SI 2005/1970, art 155(1).

4 As to the CAA see PARA 50 et seq.

5 Air Navigation Order 2005, SI 2005/1970, art 125(1). Failure to comply with a direction is an offence: see arts 147(2), 148(5), Sch 14 Pt A.

6 The person in charge of an aeronautical radio station which is used for the provision of an air traffic control service by an air traffic control unit, and any person in charge of any other air traffic service equipment if so directed by the CAA, must provide recording apparatus: Air Navigation Order 2005, SI 2005/1970, art 125(2), (3). As to the meaning of 'aeronautical radio station' see PARA 505 note 8. As to the meaning of 'air traffic control unit' see PARA 164 note 3. If any recording apparatus provided in compliance with these provisions ceases to be capable of recording the matters required to be included in the records, the person required to provide that apparatus must ensure that, so far as practicable, a record is kept in which the identification of the

aeronautical radio station, the date or dates on which the record was made, a means of determining the time at which each message or signal was transmitted or received, the identity of the aircraft to or from which and the radio frequency on which the message or signal was transmitted or received, and the time at which the record started and finished, are recorded together with, in the case of apparatus provided in respect of an aeronautical radio station which is used for the provision of an air traffic control service, a summary of voice communications exchanged between the aeronautical radio station and any aircraft: art 125(7), Sch 12 Pt B. If any recording apparatus so maintained becomes unserviceable, the person in charge of the air traffic service equipment must ensure that the apparatus is rendered serviceable again as soon as reasonably practicable: art 125(8).

7 Air Navigation Order 2005, SI 2005/1970, art 125(4)(a). In the case of an aeronautical radio station, the person in charge must ensure that the apparatus is capable of recording and replaying the terms or content of any voice radio message or signal transmitted to an aircraft either alone or in common with other aircraft or received from an aircraft by the air traffic control unit: art 125(4)(a).

8 Air Navigation Order 2005, SI 2005/1970, art 125(4)(b).

9 Air Navigation Order 2005, SI 2005/1970, art 125(4)(c). In particular, the person in charge must ensure that each record includes the identification of the aeronautical radio station, the date or dates on which the record was made, a means of determining the time at which each message or signal was transmitted or received, the identity of the aircraft to or from which and the radio frequency on which the message or signal was transmitted or received, and the time at which the record started and finished: art 125(4)(c), Sch 15 Pt B.

10 Air Navigation Order 2005, SI 2005/1970, art 125(4)(d). In considering whether or not to grant an approval the CAA may, without limitation, have regard to the purpose for which the apparatus is to be used, the manner in which the apparatus has been specified and produced in relation to the purpose for which it is to be used, the adequacy, in relation to the purpose for which the apparatus is to be used, of the operating parameters of the apparatus (if any), the manner in which the apparatus has been or will be operated, installed, modified, maintained, repaired and overhauled, and the manner in which the apparatus has been or will be inspected: art 125(5), Sch 12 Pt C. An approval may be granted, in addition to any other conditions which may be imposed, subject to conditions relating to the matters to which the CAA may have had regard when deciding whether or not to grant an approval, and may be granted in respect of one or more than one person or generally: art 125(6).

11 Air Navigation Order 2005, SI 2005/1970, art 125(4)(e).

12 Air Navigation Order 2005, SI 2005/1970, art 125(9). A person required to preserve any record by reason of his being the person in charge of the air traffic service equipment must, if he ceases to be such a person, continue to preserve the record as if he had not ceased to be such a person, and in the event of his death the duty to preserve the record falls upon his personal representative: art 125(10). If another person becomes the person in charge of the air traffic service equipment the previous person in charge or his personal representative must deliver the record to that other person on demand, and it is the duty of that other person to deal with any such record delivered to him as if he were the previous person in charge: art 125(11). The person in charge of any air traffic service equipment must within a reasonable time after being requested to do so by an authorised person produce any record required to be preserved to that authorised person: art 125(12).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(ii) Charges/255. Financing of aerodromes.

(ii) Charges

255. Financing of aerodromes.

Aerodromes¹ may be financed by loans or grants made by the Secretary of State² or local authorities³, by investments made by local authorities⁴ or any other person, and by charges established and levied by airport operators on users of aerodromes⁵.

In order to ensure fair trading practices, a distinction is made between those airports whose annual turnover⁶ exceeds £1 million and the others, the conduct of the former being closely regulated, particularly in the levying of airport charges⁷.

1 As to the meaning of 'aerodrome' see PARA 175.

2 See the Civil Aviation Act 1982 s 34; and PARA 36. As to the Secretary of State see PARA 33.

3 See the Airports Act 1986 s 25; and PARA 185. As to the local authorities for these purposes see PARA 47 note 1.

4 See the Airports Act 1986 s 20(1), (3); and PARA 48.

5 See the Air Navigation Order 2005, SI 2005/1970, art 129; and PARA 256. See also the Airports Act 1986 s 37; and PARA 228.

6 As to the meaning of 'annual turnover' see PARA 228 note 2.

7 See further PARAS 228-229. As to the meaning of 'airport charges' see PARA 228 note 10. As to permission to levy airport charges see PARA 229.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(ii) Charges/256. Charges at aerodromes.

256. Charges at aerodromes.

Without prejudice to any power of any aerodrome authority¹ to enter into an agreement on such terms as it thinks fit, an aerodrome authority may, for the purposes mentioned below, fix its charges² in respect of an aircraft or a class of aircraft by reference, among other things, to (1) any fact or matter relevant to the amount of noise caused by the aircraft or the extent or nature of any inconvenience resulting from such noise; (2) any fact or matter relevant to the amount or nature of emissions produced by the aircraft or the extent or nature of any atmospheric pollution resulting from such emissions; (3) any fact or matter relevant to the effect of the aircraft on the level of noise or atmospheric pollution at any place in or in the vicinity of the aerodrome; (4) any failure by the operator of the aircraft to secure that any noise or emissions requirements³ applying to the aircraft are complied with⁴.

The purposes mentioned above are (a) in relation to head (1), encouraging the use of quieter aircraft and reducing inconvenience from aircraft noise; (b) in relation to head (2), encouraging the use of aircraft which produce lower emissions of any substance⁵ which contributes to atmospheric pollution; (c) in relation to head (3), controlling the level of noise or atmospheric pollution in or in the vicinity of the aerodrome so far as attributable to aircraft taking off or landing at the aerodrome; (d) in relation to head (4), promoting compliance with noise or emissions requirements⁶.

The Secretary of State⁷ may by order direct specified aerodrome authorities to fix their charges, and any such order may contain directions as to the manner in which those charges are to be so fixed⁸. In determining whether, and if so how, to exercise this power in relation to an aerodrome authority, the Secretary of State must have regard, among other things, to the interests of persons who live in the area in which the aerodrome is situated⁹.

The licensee¹⁰ of any aerodrome in respect of which a licence for public use has been granted must, when required by the Secretary of State, furnish to the Secretary of State such particulars as he may require of the charges established by the licensee for the use of the aerodrome or of any facilities provided at the aerodrome for the safety, efficiency or regularity of air navigation¹¹.

1 For these purposes, 'aerodrome authority' means a person owning or managing an aerodrome licensed under an air navigation order: Civil Aviation Act 1982 s 38(7) (s 38 substituted by the Civil Aviation Act 2006 s 1). As to air navigation orders see PARA 353 et seq. As to the meaning of 'aerodrome' see PARA 175.

2 In relation to an aerodrome authority, 'charges' means the charges the authority makes for the use of an aerodrome licensed under an air navigation order which is owned or managed by the authority: Civil Aviation Act 1982 s 38(7) (as substituted: see note 1). See also PARAS 228, 229.

3 'Noise or emissions requirements' means requirements imposed in relation to aircraft taking off or landing at the aerodrome, which are either (1) requirements imposed under s 78 (see PARA 260) for the purpose of limiting, or mitigating the effect of, noise caused by such aircraft; or (2) requirements imposed by the aerodrome authority, otherwise than under s 78, for the purpose of limiting, or mitigating the effect of, noise caused by, or emissions produced by, such aircraft: s 38(3) (as substituted: see note 1). As to noise generally see PARAS 259-264.

4 Civil Aviation Act 1982 s 38(1) (as substituted: see note 1). Section 38 has effect subject to any provision relating to the use of, or charges for the use of, aerodromes which is made by or under any other enactment: s 38(6) (as so substituted).

5 For these purposes 'substance' includes a substance in solid or liquid form or in the form of a gas vapour: Civil Aviation Act 1982 s 38(2) (as substituted: see note 1).

6 Civil Aviation Act 1982 s 38(2)(a)-(d) (as substituted: see note 1).

7 As to the Secretary of State see PARA 33.

8 Civil Aviation Act 1982 s 38(4) (as substituted: see note 1).

9 Civil Aviation Act 1982 s 38(5) (as substituted: see note 1).

10 As to licences for public use see PARA 227.

11 See the Air Navigation Order 2005, SI 2005/1970, art 129. Contravention of this requirement is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale: see art 148(4). As to the standard scale see PARA 50 note 8. As to the non-payment of charges see PARAS 257-258.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(ii) Charges/257. Detention of aircraft for unpaid airport charges.

257. Detention of aircraft for unpaid airport charges.

Where default is made in the payment of airport charges¹ incurred in respect of any aircraft at an aerodrome owned or managed by any government department or a local authority², or at any other designated aerodrome³, the aerodrome authority may:

- 168 (1) detain, pending payment, either the aircraft⁴ in respect of which the charges were incurred, whether or not they were incurred by the person who is its operator⁵ at the time the detention begins, or any other aircraft of which the person in default is the operator at the time detention begins⁶; and
- 169 (2) sell the aircraft in order to satisfy the charges⁷.

The power of detention may be exercised on the occasion on which the charges were incurred or on any subsequent occasion when the aircraft is on the relevant aerodrome or on any other aerodrome owned or managed by the aerodrome authority concerned⁸.

The aerodrome authority may not so detain or continue to detain an aircraft if the operator or any other person claiming an interest in it disputes that the charges are due⁹ and gives the authority, pending the determination of the dispute, sufficient security for the payment of the charges alleged to be due¹⁰.

1 'Airport charges' means charges payable to an aerodrome authority for the use of, or for services provided at, an aerodrome, but does not include charges payable by virtue of the Transport Act 2000 s 73 (charges for air navigation services: see PARA 588 et seq) or penalties payable by virtue of the Civil Aviation Act 1982 s 38C (see PARA 261) or s 78A (see PARA 262): Civil Aviation Act 1982 s 88(10) (definition amended by the Transport Act 2000 s 97, Sch 8 Pt III PARA 6(1), (3); and the Civil Aviation Act 2006 s 13, Sch 2 paras 1, 2). For these purposes 'aerodrome authority', in relation to any aerodrome, means the person owning or managing it (see PARA 249 et seq): Civil Aviation Act 1982 s 88(10). As to the meaning of 'aerodrome' see PARA 175. Airport charges must relate to specific aircraft: see *Havelet Leasing Ltd v Cardiff-Wales Airport Ltd* (1988) 1 S & B Av R IV/111.

2 As to the meaning of 'local authority' see PARA 47 note 1.

3 Or at any other aerodrome designated for these purposes by an order made by the Secretary of State: Civil Aviation Act 1982 s 88(10) (definition amended by the Airports Act 1986 s 83(5), Sch 6 Pt I; and by the Local Government etc (Scotland) Act 1994 s 180(1), (2), Sch 13 para 126(4), Sch 14). As to the Secretary of State see PARA 33. The following airports have been designated for these purposes: Southampton (see the Southampton Airports (Designation) (Detention and Sale of Aircraft) Order 1972, SI 1972/189); Lydd (see the Lydd Airport (Designation) (Detention and Sale of Aircraft) Order 1972, SI 1972/1736); Aberdeen, Edinburgh, Glasgow, Gatwick, Heathrow, Stansted and Prestwick (see the Aerodromes (Designation) (Detention and Sale of Aircraft) (No 2) Order 1986, SI 1986/1347); Birmingham, Blackpool, Bournemouth (Hurn), Bristol, Cardiff-Wales, East Midlands, Leeds/Bradford, Luton, Manchester, Newcastle, Norwich, Southend and Teesside (see the Aerodromes (Designation) (Detention and Sale of Aircraft) Order 1987, SI 1987/1377); Bembidge, Cambridge, London City and Redhill (see the Aerodromes (Designation) (Detention and Sale of Aircraft) (No 2) Order 1987, SI 1987/2229); Exeter, Humberside and Liverpool (see the Aerodromes (Designation) (Detention and Sale of Aircraft) Order 1990, SI 1990/1527); Gloucestershire (see the Gloucestershire Airport (Designation) (Detention and Sale of Aircraft) Order 1992, SI 1992/3106); Cranfield (see the Cranfield Airport (Designation) (Detention and Sale of Aircraft) Order 1993, SI 1993/1026); Barra-Traigh Mhor and Biggin Hill (see the Aerodromes (Designation) (Detention and Sale of Aircraft) Order 1995, SI 1995/2475); and Coventry (see the Coventry Airport (Designation) (Detention and Sale of Aircraft) Order 1998, SI 1998/1827).

4 The power of detention and sale extends to any equipment of the aircraft carried in it, and to any stores carried in it for use in connection with its operation, whether or not the equipment and stores are the operator's property (Civil Aviation Act 1982 s 88(7)); and the power of detention extends to any aircraft documents carried

in the aircraft (s 88(8)). 'Aircraft documents' means any certificate of registration, maintenance or airworthiness, log books and any similar document: s 88(10).

5 As to aircraft operators see PARA 437.

6 Civil Aviation Act 1982 s 88(1)(a). See further *R v Civil Aviation Authority, ex p Emery Air Freight Corp* (1988) 1 S & B Av R IV/105, CA. The detention must be begun by an overt act: see *Havelet Leasing Ltd v Cardiff-Wales Airport Ltd* (1988) 1 S & B Av R IV/111. As to whether leave of the court or consent of the administrator of a company is required where an administration order has been made under the Insolvency Act 1986 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 146 et seq) before the aircraft authority can exercise its right to detain aircraft see *Bristol Airport plc v Powdrill* [1990] Ch 744, [1990] 2 All ER 493, 1 S & B Av R IV/121, CA. As to other powers of detention see PARA 436. As to forbidding access to an airport as long as disputed increased charges are not paid see *Air Canada v Secretary of State for Transport* [1981] 3 All ER 336; and PARA 249.

The Secretary of State may, after consultation with any local authority which appears to him to be concerned, by order repeal any enactment in a local Act which appears to him to be unnecessary having regard to the provisions of the Civil Aviation Act 1982 s 88 or to be inconsistent with it: s 88(11). 'Enactment' includes any enactment contained in an Act of the Parliament of Northern Ireland, an Order in Council under the Northern Ireland (Temporary Provisions) Act 1972 s 1(3) or a Measure of the Northern Ireland Assembly: Civil Aviation Act 1982 s 105(1). At the date at which this volume states the law no such orders had been made.

7 Civil Aviation Act 1982 s 88(1)(b). As to sale of aircraft to satisfy unpaid charges see PARA 258.

8 Civil Aviation Act 1982 s 88(9).

9 Civil Aviation Act 1982 s 88(2)(a). Similarly, if such a person disputes that the aircraft detained is the one in respect of which the charges were incurred the aerodrome authority may not continue to detain the aircraft, provided the requisite security is given (see s 88(2)(b)): s 88(2)(a).

10 Civil Aviation Act 1982 s 88(2)(b).

UPDATE

257 Detention of aircraft for unpaid airport charges

NOTE 3--The following airports are now designated by the Aerodromes (Designation) (Detention and Sale of Aircraft) (England and Wales) Order 2009, SI 2009/2350 (replacing the orders cited): Bembidge, Biggin Hill, Birmingham, Blackpool, Bournemouth, Bristol, Bristol (Filton), Cambridge, Cardiff, Carlisle, Coventry, Cranfield, Doncaster/Sheffield, Durham Tees Valley, Exeter, Farnborough, Gloucestershire, Humberside, Leeds/Bradford, Liverpool, London City, London (Gatwick), London (Heathrow), London (Luton), London (Stansted), Lydd, Manchester, Manston, Newcastle, Norwich, Nottingham East Midlands, Oxford, Redhill, Southampton, Southend, Wolverhampton.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(ii) Charges/258. Sale of aircraft for unpaid airport charges.

258. Sale of aircraft for unpaid airport charges.

An aerodrome authority¹ may not sell an aircraft detained for unpaid airport charges² without the permission of the High Court³. An authority proposing to apply for permission to sell an aircraft detained in these circumstances must, in the prescribed manner⁴, bring the proposed application to the attention of those persons who may be affected by the determination of the court⁵ and make provision so that such persons may become parties to the proceedings on the application if need be⁶.

On the hearing of the application the court may not give leave to sell the aircraft except on proof that a sum is due to the authority for airport charges, that default has been made in its payment and that the aircraft is liable to sale by reason of the default⁷. If leave is given the authority must secure that the aircraft is sold for the best price that can reasonably be obtained⁸.

The proceeds of any sale must be applied in the following order:

- 170 (1) payment of customs or excise duty or value added tax due in consequence of the aircraft having been brought into the United Kingdom⁹;
- 171 (2) payment of expenses incurred by the aerodrome authority in detaining, keeping and selling the aircraft and in applying for permission to sell it¹⁰;
- 172 (3) payment of airport charges¹¹ found due¹²;
- 173 (4) payment of charges for air navigation services¹³;

and any surplus must be paid to or among the persons whose interests in the aircraft have been divested by reason of the sale¹⁴.

Nothing in these provisions prejudices an authority's right to recover any charges, or any part of them, by action¹⁵.

1 As to the meaning of 'aerodrome authority' see PARA 257 note 1.

2 Ie detained in pursuance of the Civil Aviation Act 1982 s 88: see PARA 257. As to the meaning of 'airport charges' see PARA 257 note 1.

3 Civil Aviation Act 1982 s 88(3), (10).

4 'Prescribed' means prescribed by regulations made by the Secretary of State: see the Civil Aviation Act 1982 s 105(1). At the date at which this volume states the law no regulations had been made under s 88, but by virtue of the Interpretation Act 1978 s 17(2)(b) the Civil Aviation (Airport Charges) (Sale of Detained Aircraft) Regulations 1971, SI 1971/1134, have effect as if so made. As to the Secretary of State see PARA 33.

5 Civil Aviation Act 1982 s 88(4)(a).

6 Civil Aviation Act 1982 s 88(4)(b). While failure to comply with these requirements is actionable as against the authority at the suit of any person suffering loss in consequence, it is not a ground for impugning the validity of a sale: s 88(5).

7 Civil Aviation Act 1982 s 88(3).

8 Civil Aviation Act 1982 s 88(4). As to the sale of aircraft see further PARA 429. As to failure to comply with this provision see note 6. If aircraft documents were detained with an aircraft (see PARA 257 note 4) which is sold, the aerodrome authority must transfer them to the purchaser: s 88(8).

- 9 Civil Aviation Act 1982 s 88(6)(a). As to the meaning of 'United Kingdom' see PARA 30 note 1.
- 10 Civil Aviation Act 1982 s 88(6)(b).
- 11 As to the meaning of 'airport charges' see PARA 257 note 1.
- 12 Civil Aviation Act 1982 s 88(6)(c).
- 13 Civil Aviation Act 1982 s 88(6)(d) (amended by the Transport Act 2000 s 97, Sch 8, Pt III para 6(1), (2)).
As to these charges see PARA 588 et seq.
- 14 Civil Aviation Act 1982 s 88(6).
- 15 Civil Aviation Act 1982 s 88(12).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(iii) Noise and Vibration/259. Noise and vibration on aerodromes.

(iii) Noise and Vibration

259. Noise and vibration on aerodromes.

The Secretary of State¹ may prescribe² the conditions under which noise and vibration may be caused by aircraft, including military aircraft³, on government aerodromes⁴, licensed aerodromes⁵, or aerodromes at which the manufacture, repair or maintenance of aircraft is carried out by persons carrying on business as manufacturers or repairers of aircraft⁶. No action lies in respect of nuisance by reason only of the noise and vibration caused by aircraft on an aerodrome in relation to which the Secretary of State has prescribed conditions, provided those conditions are duly complied with⁷.

The conditions which have been prescribed are:

- 174 (1) that the aircraft is taking off or landing⁸;
- 175 (2) that the aircraft is moving on the ground or water⁹; or
- 176 (3) that the engines are being operated in the aircraft for the purpose of (a) ensuring their satisfactory performance; (b) bringing them to a proper temperature in preparation for, or at the end of, a flight; or (c) ensuring that the instruments, accessories or other components of the aircraft are in a satisfactory condition¹⁰.

1 As to the Secretary of State see PARA 33.

2 Ie by regulations made under the Air Navigation Order 2005, SI 2005/1970.

3 As to the meaning of 'military aircraft' see PARA 31 note 5.

4 As to the meaning of 'aerodrome' see PARA 175. As to the meaning of 'government aerodrome' see PARA 178.

5 As to the meaning of 'licensed aerodrome' see PARA 226 note 10. As to the licensing of aerodromes generally see PARA 226 et seq.

6 Civil Aviation Act 1982 s 77(1); Air Navigation Order 2005, SI 2005/1970, art 131(1). As to manufacture and repairs see PARAS 366, 430.

7 Civil Aviation Act 1982 s 77(2); Air Navigation Order 2005, SI 2005/1970, art 131(2). Compensation may, in certain circumstances, be recovered where the value of land is depreciated by noise, vibration or other physical factors caused by the use of an aerodrome: see the Land Compensation Act 1973 ss 1-19; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 884 et seq. See *Brunt v Southampton International Airport Ltd* [2005] EWCA Civ 93, [2005] RVR 120.

8 Air Navigation (General) Regulations 2006, SI 2006/601, reg 11(a).

9 Air Navigation (General) Regulations 2006, SI 2006/601, reg 11(b).

10 Air Navigation (General) Regulations 2006, SI 2006/601, reg 11(c)-(f).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(iii) Noise and Vibration/260. Aircraft operators' duties as to noise and vibration.

260. Aircraft operators' duties as to noise and vibration.

The Secretary of State¹ may by notice² provide that it is the duty of the operator³ of an aircraft to secure that, after the aircraft takes off or before it lands at a designated aerodrome⁴, the requirements specified in the notice are complied with, for the purpose of limiting or mitigating the effect of noise and vibration connected with the taking off or landing of aircraft at that aerodrome⁵. If it appears to the Secretary of State that any such requirement has not been complied with he may, after considering any representation that the operator may make to him, give to the person managing the aerodrome a direction requiring him to secure that facilities for using the aerodrome are withheld to the extent specified in the direction from the operator's aircraft and servants⁶.

The Secretary of State may, if he considers it appropriate for the purpose of avoiding, limiting or mitigating the effect of noise and vibration connected with the taking off or landing of aircraft at a designated aerodrome⁷, by notice⁸:

- 177 (1) prohibit aircraft of a description specified in the notice from taking off or landing at the aerodrome during specified periods⁹;
- 178 (2) specify the maximum number of occasions when particular aircraft are permitted to take off or land at the aerodrome during specified periods¹⁰; or
- 179 (3) determine, after consulting any body representative of operators using the aerodrome¹¹, the operators who will be entitled to arrange for their aircraft to take off or land and the number of occasions on which their aircraft may take off or land during the specified periods¹².

If it appears to the Secretary of State that an aircraft is about to take off in contravention of the limitations thus imposed, any person authorised by him in that behalf may detain the aircraft for such period as that person considers appropriate for preventing the contravention, and may for that purpose enter on any land¹³. This also applies when it appears to a person authorised by the airport manager that an aircraft is about to take off in contravention of the imposed restriction or prohibition: that person, or a person whom he has authorised, may detain the aircraft in order to prevent the contravention and, for that purpose, may enter on any land¹⁴.

1 As to the Secretary of State see PARA 33. Operators of non-designated aerodromes now have powers to regulate noise and vibration from aircraft similar to those conferred on the Secretary of State: see the Civil Aviation Act 1982 s 38A; and PARA 261.

2 The notice must be published in the prescribed manner: Civil Aviation Act 1982 s 78(1). As to the meaning of 'prescribed' see PARA 258 note 4. At the date at which this volume states the law no regulations had been made under s 78, but by virtue of the Interpretation Act 1978 s 17(2)(b) the Civil Aviation (Notices) Regulations 1978, SI 1978/1303, have effect as if so made. As to the prescribed manner of publication see reg 2.

Any such notice may contain such incidental or supplementary provisions as the Secretary of State considers appropriate and may be varied or revoked by a subsequent notice: see the Civil Aviation Act 1982 s 78(12).

3 As to the meaning of 'operator' see PARA 437.

4 'Designated aerodrome' means any aerodrome in Great Britain which is designated for these purposes by an order made by the Secretary of State: Civil Aviation Act 1982 s 80. As to the meaning of 'aerodrome' see PARA 175. As to the meaning of 'Great Britain' see PARA 30 note 1. At the date at which this volume states the law no order had been made under s 80, but by virtue of the Interpretation Act 1978 s 17(2)(b), the Civil

Aviation (Designation of Aerodromes) Order 1981, SI 1981/651, has effect as if so made. The designated aerodromes for these purposes are Heathrow Airport (London), Gatwick Airport (London) and Stansted Airport (London): see art 2.

5 See the Civil Aviation Act 1982 s 78(1). The Secretary of State may, after consultation with any local authority which appears to him to be concerned, by order repeal any enactment in a local Act which appears to the Secretary of State to be unnecessary having regard to the provisions of the Civil Aviation Act 1982 s 78: s 78(11). As to the meaning of 'enactment' see PARA 257 note 6.

6 Civil Aviation Act 1982 s 78(2). It is the duty of the person managing the aerodrome to comply with the direction: s 78(2); and see PARA 262.

7 In exercising his power under the Civil Aviation Act 1982 s 78(3), the Secretary of State must make his policy objectives understandable to enable affected persons to make informed submissions about the exercise of such power against the policy background: *R v Secretary of State for Transport, ex p Richmond upon Thames London Borough Council (No 4)* [1996] 4 All ER 903, CA. He must also strike a fair balance between the United Kingdom's economic well-being and the effective enjoyment by those who may be affected by the noise of the aircraft of their right under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8 (right to respect for home and private and family life): see *Hatton v United Kingdom (Application 36022/97)* [2002] 1 FCR 732, ECtHR; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 149 et seq.

It is the duty of the person managing the aerodrome to secure that any specified limitations are complied with: Civil Aviation Act 1982 s 78(3).

8 The notice must be published in the prescribed manner: Civil Aviation Act 1982 s 78(3). As to the prescribed manner of publication see the Civil Aviation (Notices) Regulations 1978, SI 1978/1303, reg 2. See also note 2.

A notice under the Civil Aviation Act 1982 s 78(3) may make, in relation to a designated aerodrome, provision as respects any period notwithstanding that the period is included in or that there is included in the period, any other period as respects which provision relating to the aerodrome is made by the notice or by another notice under s 78(3): s 78(5)(b). Any such notice may contain such incidental or supplementary provisions as the Secretary of State considers appropriate and may be varied or revoked by a subsequent notice: see s 78(12).

9 Civil Aviation Act 1982 s 78(3)(a). This restriction does not apply in an emergency of a description specified in the notice: s 78(3)(a).

10 Civil Aviation Act 1982 s 78(3)(b). This restriction does not apply in an emergency of a description specified in the notice: s 78(3)(a), (b). A decision by the Secretary of State to introduce restrictions on night flying based on a quota system according to the noise of the aircraft used is contrary to s 78(3)(b): *R v Secretary of State for Transport, ex p Richmond upon Thames London Borough Council* [1994] 1 All ER 577 [1994] 1 WLR 74. Where the proposed quota system would result in increased noise levels, contrary to the expressed policy of the Secretary of State, he may depart from that policy only after full consultation and must acknowledge that he has so departed: *R v Secretary of State for Transport, ex p Richmond upon Thames London Borough Council* (1994) Times, 29 December.

The Secretary of State may, by notice given in the prescribed manner, determine that a particular occasion be disregarded: see the Civil Aviation Act 1982 s 78(5)(f). As to the prescribed manner see the Civil Aviation (Notices) Regulations 1978, SI 1978/1303, reg 3. See also note 2. Additionally, a particular occasion or series of occasions may be disregarded if the circumstances for disregard are specified by notice published in the prescribed manner and the airport operator determines that the occasion is to be disregarded while notifying the Secretary of State appropriately: see the Civil Aviation Act 1982 s 78(4). As to the prescribed manner of publication see the Civil Aviation (Notices) Regulations 1978, SI 1978/1303, reg 2. See also note 2. Any such notice may contain such incidental or supplementary provisions as the Secretary of State considers appropriate and may be varied or revoked by a subsequent notice: see the Civil Aviation Act 1982 s 78(12).

11 See the Civil Aviation Act 1982 s 78(5)(a).

12 See the Civil Aviation Act 1982 s 78(3)(c). It is the duty of the person managing the aerodrome to secure that the limitations are complied with: s 78(3). Nothing, however, requires him to prevent an aircraft from landing at the aerodrome: s 78(5)(e).

13 Civil Aviation Act 1982 s 78(5)(c). As to other powers of detention see PARA 436.

14 Civil Aviation Act 1982 s 78(5)(d).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(iii) Noise and Vibration/261. Power for aerodrome operator to establish noise control schemes.

261. Power for aerodrome operator to establish noise control schemes.

An aerodrome operator¹ may establish and maintain a scheme (a 'noise control scheme') for the purpose of avoiding, limiting or mitigating the effect of noise connected with the taking off or landing of aircraft at the aerodrome². A noise control scheme may:

- 180 (1) require operators of aircraft which are to take off or land at the aerodrome to secure that specified³ requirements are complied with in relation to the aircraft after they take off, or before they land, at the aerodrome;
- 181 (2) prohibit aircraft of specified descriptions from taking off or landing at the aerodrome during specified periods;
- 182 (3) specify the maximum number of occasions on which aircraft of specified descriptions may take off or land at the aerodrome during specified periods;
- 183 (4) impose other restrictions for limiting the cumulative amount of noise caused by aircraft of specified descriptions taking off or landing at the aerodrome during specified periods⁴.

Where a noise control scheme imposes requirements under head (1), the requirements so imposed have effect in relation to such an aircraft only (a) while it is within such area as may be specified in relation to the aerodrome by order made by the Secretary of State; or (b) if no area has been so specified, while it is within the area represented by a circle with a radius of 40 kilometres from the centre of the longest runway at the aerodrome⁵. Also, where requirements are imposed under head (1), the scheme may provide for the aerodrome operator to require the payment of a penalty if any such requirement is not complied with in relation to an aircraft taking off or landing at the aerodrome⁶.

A noise control scheme which contains provision under head (3), or provision under head (4) which has the effect of limiting the number of occasions on which aircraft may take off or land at the aerodrome during the periods specified, must make provision for determining (i) the persons who are entitled to arrange for aircraft of which they are the operators to take off or land at the aerodrome during the periods in question; and (ii) as respects each of those persons, the number of occasions, whether determined by reference to a maximum number or otherwise, on which aircraft of a particular description of which he is the operator may take off or land at the aerodrome during those periods⁷.

A noise control scheme may make provision as respects any period even if that period is included in, or there is included in that period, any other period as respects which provision relating to the aerodrome is made by the scheme⁸. A scheme may provide for circumstances in which the scheme, or any provision of the scheme, is not to apply, contain such incidental or supplementary provisions as the aerodrome operator considers appropriate, and be amended or revoked by the aerodrome operator⁹.

A noise control scheme must not be established in relation to an aerodrome which is a designated aerodrome¹⁰; and on such a designation coming into force in relation to an aerodrome any noise control scheme which has effect in relation to the aerodrome ceases to have effect¹¹.

¹ For these purposes 'aerodrome operator' means a person owning or managing an aerodrome: Civil Aviation Act 1982 s 38A(11) (ss 38A-38C added by the Civil Aviation Act 2006 s 4).

2 Civil Aviation Act 1982 s 38A(1) (as added: see note 1).

3 'Specified' means specified in the scheme: Civil Aviation Act 1982 s 38A(2) (as added: see note 1).

4 Civil Aviation Act 1982 s 38A(2) (as added: see note 1).

5 Civil Aviation Act 1982 s 38B(1), (2) (as added: see note 1). An area may be so specified by the Secretary of State by description, by reference to a map or in any other way, but no point in the area so specified may be more than 60 kilometres in a straight line from the centre of the longest runway at the aerodrome: s 38B(3), (4) (as so added). Before making an order under s 38B the Secretary of State must consult (1) the Civil Aviation Authority ('CAA'); (2) the aerodrome operator; (3) any body appearing to the Secretary of State to be representative of operators of aircraft using the aerodrome; (4) the local authorities in whose areas the aerodrome (or any part of it) is situated; (5) other local authorities whose areas are in the neighbourhood of the aerodrome; and (6) any other body appearing to the Secretary of State to be representative of persons concerned with the locality in which the aerodrome is situated: s 38B(5) (as so added). As to the Secretary of State see PARA 33. As to the CAA see PARA 50 et seq. As to the meaning of 'local authority' see PARA 47 note 1.

6 Civil Aviation Act 1982 s 38C(1), (2) (as added: see note 1). Any such penalty must be of an amount specified in the scheme, and paid to the aerodrome operator by the operator of the aircraft in question: s 38C(3) (as so added). The scheme must afford the operator of the aircraft an opportunity to make representations to the aerodrome operator with respect to the matter either before or after the penalty is imposed: s 38C(4) (as so added). If the scheme affords an opportunity to make representations after the penalty is imposed, it must provide for the aerodrome operator to cancel the penalty if it considers it appropriate to do so having considered those representations: s 38C(5) (as so added). An aerodrome operator which receives penalties under a noise control scheme must make payments equal to the amount of those penalties for purposes which appear to it to be likely to be of benefit to persons who live in the area in which the aerodrome is situated: s 38C(6) (as so added).

7 Civil Aviation Act 1982 s 38A(3), (4) (as added: see note 1). Before making, amending or revoking any provision in a noise control scheme by virtue of s 38A(3), the aerodrome operator must consult any body appearing to it to be representative of operators of aircraft using the aerodrome: s 38A(5) (as so added).

8 Civil Aviation Act 1982 s 38A(6) (as added: see note 1).

9 Civil Aviation Act 1982 s 38A(7) (as added: see note 1).

10 le designated for the purposes of the Civil Aviation Act 1982 s 78 (see PARA 260).

11 Civil Aviation Act 1982 s 38A(8) (as added: see note 1). The amendment or revocation of a noise control scheme, or its ceasing to have effect by virtue of s 38A(8), does not affect the validity of anything previously done under the scheme: s 38A(9) (as so added). The powers conferred on an aerodrome operator by s 38A, and ss 38B, 38C, are in addition to, and do not prejudice, any other power of the aerodrome operator to take steps for the purpose of avoiding, limiting or mitigating the effect of noise connected with the taking off or landing of aircraft at the aerodrome: s 38A(10) (as so added).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(iii) Noise and Vibration/262. Aerodrome managers' duties as to noise and vibration.

262. Aerodrome managers' duties as to noise and vibration.

The person managing a designated aerodrome¹ must comply with directions given to him by the Secretary of State² for the purpose of limiting, or of mitigating the effect of, noise and vibration connected with the taking off or landing of aircraft at the aerodrome³. Such directions may be given for the purpose of avoiding, limiting, or mitigating the effect of, such noise and vibration either generally, or in any particular area or areas⁴.

After consulting any such person, the Secretary of State may by order⁵ require him, at his own expense, to provide, maintain and operate specified equipment for measuring noise in the vicinity of the aerodrome⁶, and to make reports to the Secretary of State with respect to the noise so measured and to permit any person authorised by the Secretary of State to inspect that equipment on demand at any time⁷. If the person managing the aerodrome fails to provide, maintain and operate the equipment, or fails to make reports or allow inspection⁸, the Secretary of State may, after considering any representations made by that person, take such steps as he considers appropriate for remedying that failure⁹, and may recover from that person, in any court of competent jurisdiction, any expense attributable to the taking of those steps¹⁰.

The person for the time being managing an aerodrome (the 'relevant manager')¹¹ may establish and maintain a penalty scheme, that is, a scheme which requires a penalty to be paid if any requirement¹² to limit noise or vibration in relation to an aircraft taking off or landing at the aerodrome is not complied with¹³. Any such penalty is to be of an amount specified in the scheme, and is to be paid to the relevant manager by the operator of the aircraft in question¹⁴. The penalty scheme must afford the operator of the aircraft an opportunity to make representations to the relevant manager with respect to the matter either before or after the penalty is imposed¹⁵. If the scheme affords an opportunity to make representations after the penalty is imposed, it must provide for the relevant manager to cancel the penalty if he considers it appropriate to do so having considered those representations¹⁶. A relevant manager who receives penalties under a penalty scheme must make payments equal to the amount of those penalties for purposes which appear to him to be likely to be of benefit to persons who live in the area in which the aerodrome is situated¹⁷.

The Secretary of State may direct a specified relevant manager to establish a penalty scheme, or to amend or revoke a penalty scheme¹⁸ and must publish any such direction in such manner as appears to him to be appropriate¹⁹. A direction which requires a relevant manager to establish or amend a penalty scheme may include directions as to the provisions which are to be included in the scheme²⁰. Before giving a direction the Secretary of State must consult the relevant manager and any body appearing to him to be representative of operators of aircraft using the aerodrome in question²¹. If a relevant manager fails to comply with such a direction given to him he is guilty of an offence²².

1 As to the meaning of 'designated aerodrome' see PARA 260 note 4. As to the meaning of 'aerodrome' see PARA 175. As to the meaning of 'Great Britain' see PARA 30 note 1. At the date at which this volume states the law no order had been made designating aerodromes under the Civil Aviation Act 1982 s 80, but by virtue of the Interpretation Act 1978 s 17(2)(b) the Civil Aviation (Designation of Aerodromes) Order 1981, SI 1981/651, has effect as if so made. The designated aerodromes for these purposes are: Heathrow Airport (London), Gatwick Airport (London) and Stansted Airport (London): see art 2. As to the Secretary of State see PARA 33.

2 As to such directions see PARA 260.

3 Civil Aviation Act 1982 s 78(6). The Secretary of State may, after consultation with any local authority which appears to him to be concerned, by order repeal any enactment in a local Act which appears to the Secretary of State to be unnecessary having regard to the provisions of s 78: s 78(11). As to the meaning of 'enactment' see PARA 257 note 6.

4 Civil Aviation Act 1982 s 78(6A) (added by the Civil Aviation Act 2006 s 2(2)).

5 The person for the time being managing the aerodrome is under a duty to comply with any such order: Civil Aviation Act 1982 s 78(8).

6 Civil Aviation Act 1982 s 78(8)(a).

7 Civil Aviation Act 1982 s 78(8)(b).

8 Failure to make reports and permit inspection in accordance with the Civil Aviation Act 1982 s 78(8)(b) is an offence carrying a penalty, on summary conviction, of a fine not exceeding level 5 on the standard scale; and, if the failure continues after conviction, a further offence, punishable on summary conviction with a fine not exceeding 10% of level 5 on the standard scale, is committed on every day on which the failure continues: s 78(9)(i), (ii) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and by the Civil Aviation Act 2006 s 2(3)). For the purpose of conferring jurisdiction, the offence is deemed to have been committed in any place where the offender may for the time being be: Civil Aviation Act 1982 s 99(3), (5). As to the standard scale see PARA 50 note 8.

9 Civil Aviation Act 1982 s 78(9)(a).

10 Civil Aviation Act 1982 s 78(9)(b). This is without prejudice to any other power of the Secretary of State to recover the expenses: s 78(10).

11 See the Civil Aviation Act 1982 s 78A(1) (ss 78A, 78B added by the Civil Aviation Act 2006 s 3).

12 He under the Civil Aviation Act 1982 s 78(1): see PARA 260.

13 See the Civil Aviation Act 1982 s 78A(1), (2) (as added: see note 11). A penalty scheme may contain such incidental or supplementary provisions as the relevant manager considers appropriate, and may be amended or revoked by the relevant manager: s 78A(6) (as so added). The amendment or revocation of a penalty scheme is not to affect the validity of anything previously done under the scheme: s 78A(7) (as so added).

14 Civil Aviation Act 1982 s 78A(3) (as added: see note 11).

15 Civil Aviation Act 1982 s 78A(4) (as added: see note 11).

16 Civil Aviation Act 1982 s 78A(5) (as added: see note 11).

17 Civil Aviation Act 1982 s 78A(8) (as added: see note 11).

18 Civil Aviation Act 1982 s 78B(1) (as added: see note 11).

19 Civil Aviation Act 1982 s 78B(2) (as added: see note 11).

20 Civil Aviation Act 1982 s 78B(3) (as added: see note 11).

21 Civil Aviation Act 1982 s 78B(4) (as added: see note 11).

22 Civil Aviation Act 1982 s 78B(5) (as added: see note 11). He is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and if the failure continues after his conviction of an offence under s 78B(5) arising from the failure, he is guilty of a separate offence under s 78B(5) on each day on which the failure continues thereafter and be liable on summary conviction to a fine not exceeding 10% of level 5 on the standard scale: s 78B(5)(a), (b) (as so added).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(iii) Noise and Vibration/263. Requirements as to noise-related operating restrictions.

263. Requirements as to noise-related operating restrictions.

At city airports¹ and other civil airports which are within the United Kingdom² and have a large volume of traffic³, rules and procedures for dealing with noise problems have to be followed⁴. The competent authority⁵ for a relevant airport⁶ (1) must for the purposes of dealing with noise problems at that airport adopt a balanced approach⁷; (2) may consider economic incentives as a noise management measure⁸; (3) must not impose a measure or a combination of measures which are more restrictive than is necessary to achieve the environmental objective established for the airport⁹ by that authority¹⁰; and (4) must not discriminate on grounds of the nationality or the identity of the air carrier or the aircraft manufacturer¹¹.

When considering operating restrictions¹² as a means to reduce or limit the aeroplane noise at a relevant airport, the competent authority must take into account the likely costs and benefits of the various measures available as well as airport-specific characteristics¹³. When adopting operating restrictions at a relevant airport based on an aircraft's noise performance, the competent authority must base those restrictions on the noise performance of the aircraft as determined by the certification procedure¹⁴. Before adopting any measures to deal with noise problems at a relevant airport the competent authority must establish and publish an environmental objective for that airport¹⁵.

The competent authority for a relevant airport must consult interested parties on the application to that airport of the rules as to assessment¹⁶ and as to introducing operating restrictions¹⁷, allowing a reasonable time in each case for their opinions to be taken fully into account before it reaches its decision¹⁸.

Where the competent authority for a relevant airport intends to introduce any new operating restrictions at that airport, he must publish this intention in accordance with the prescribed time limits¹⁹ by way of public notice to all interested parties, as well as his explanation of the reasons for introducing those operating restrictions taking into account the appropriate elements of the balanced approach²⁰.

Every person affected by (a) a determination made by a competent authority that technical changes to operating restrictions of a partial nature are minor and do not have any significant cost implications for the airline operators²¹; or (b) a decision made by a competent authority to introduce operating restrictions or measures, has a right of appeal to arbitration by an independent arbitrator, agreed between the parties; or, in the absence of such agreement, to an arbitrator appointed by the President of the Chartered Institute of Arbitrators on the application of either party²². Any such right is exercisable within three months of the publication of the determination or decision by the competent authority²³. The decision of the arbitrator is final and binding on the parties²⁴.

An airport operator that is a competent authority must, in response to a request made by the Secretary of State, supply to him such information as he may require in order to enable him to comply with the United Kingdom's obligations under the Community legislation²⁵ on the establishment of rules and procedures with regard to the introduction of noise-related restrictions at Community airports²⁶.

1 'City airport' means an airport listed in the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, Sch 1: reg 2. The airports so listed are Belfast City Airport and London City Airport: Sch 1.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 I.e. which have more than 50,000 movements of civil subsonic jet aeroplanes per calendar year, taking into consideration the average of the last three calendar years before the application of the rules contained in the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, to the airport in question: reg 3. 'Movement' means either a take off or a landing; and 'civil subsonic jet aeroplane' means an aeroplane with either (1) a maximum certificated take-off mass of 34,000 kilograms or more; or (2) a maximum internal accommodation of more than 19 passenger seats excluding seats for crew only: reg 2.

4 See the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, regs 3, 5. These regulations give effect to European Parliament and Council Directive 2002/30 (OJ L85, 28.3.2002, p 40).

5 'Competent authority' in relation to a relevant airport means the authority specified in the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 4: reg 2. In the case of a relevant airport (see note 6) that is designated for the purposes of the Civil Aviation Act 1982 s 78 (see PARA 260), the Secretary of State is the competent authority in respect of all matters provided for by notice under s 78 and the airport operator is the competent authority in respect of all other matters for the purposes of the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742 (reg 4(1)) and in the case of a relevant airport not so designated the competent authority for the purposes of the regulations is the airport operator (reg 4(2)). As to the meaning of 'airport operator' see PARA 183 note 4; definition applied by reg 2. As to the Secretary of State see PARA 33.

6 'Relevant airport' means an airport to which the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, apply: reg 2.

7 Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 5(1)(a). 'Balanced approach' means an approach under which there is consideration of the available measures to address the noise problem at an airport, i.e. the foreseeable effect of a reduction of aircraft noise at source, land-use planning and management, noise abatement operational procedures and operating restrictions: reg 2.

8 Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 5(1)(b).

9 I.e. in accordance with the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 5(4): see text to note 14. 'Environmental objective', in relation to an airport, means an objective set by a competent authority in support of one or more of the following objectives: (1) the promotion of the development of airport capacity in harmony with the environment; (2) facilitating any specific noise abatement objectives at that airport; (3) achieving maximum environment benefit in the most cost-effective manner; (4) limiting or reducing the number of people significantly affected by aircraft noise: reg 2.

10 Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 5(1)(c).

11 Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 5(1)(d).

12 'Operating restrictions' means noise-related action that limits or reduces access of civil subsonic jet aeroplanes to an airport, and includes actions which are aimed at the withdrawal from operations of marginally compliant aircraft at specific airports as well as limitations of a partial nature affecting the operation of civil subsonic aeroplanes according to time period: Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 2. 'Marginally compliant aircraft' means civil subsonic jet aeroplanes, that meet the certification limits, as laid down in the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) Annex 16 (3rd Edn) Vol 1 Pt II Ch 3, by a cumulative margin of not more than 5 EPNdB, whereby the cumulative margin is the figure expressed in EPNdB obtained by adding the individual margins at each of the three reference noise measurement points as defined in Annex 16 Ch 3; and 'EPNdB' means Effective Perceived Noise in decibels: Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 2.

13 Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 5(2). As to the factors to be taken into account when considering a decision on operating restrictions at a relevant airport see reg 6, Sch 2.

14 Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 5(3). The certification procedure must be conducted in accordance with the Chicago Convention Annex 16. For the rules on the introduction of operating restrictions aimed at the withdrawal of marginally compliant aircraft see the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 7. A marginally compliant aircraft registered in a developing country is for a period of ten years from 28 March 2002 exempted from any operating restrictions introduced at a relevant airport by the competent authority under reg 7 provided it meets certain conditions: see reg 8. 'Developing country' means a country on the United Nations

Development Programme list or the Organization for Economic Co-operation and Development list which is identified in the European Commission Final Report of November 2001: Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 2. In addition, the competent authority for a relevant airport may, in individual cases, authorise a marginally compliant aircraft to land at and take off from that airport, as part of an individual operation, where operating restrictions have been introduced by that authority which would otherwise preclude it, if it appears to him that either the individual operation is of such an exceptional nature that it would be unreasonable to withhold a temporary exemption or the aircraft operation is a non-revenue flight for the purpose of alteration, repair or maintenance: reg 9.

15 Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 5(4).

16 le on the application of the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 6.

17 le on the application of the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 7.

18 Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 10.

19 As to the time limits see the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 11(2).

20 See the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 11(1).

21 le a determination under the Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 6(3)(b).

22 Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 12.

23 Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 12.

24 Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 12.

25 le European Parliament and Council Directive 2002/30 (OJ L85, 28.3.2002, p 40) art 14.

26 Aerodromes (Noise Restrictions) (Rules and Procedures) Regulations 2003, SI 2003/1742, reg 13.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(iii) Noise and Vibration/264. Grants towards cost of sound-proofing buildings.

264. Grants towards cost of sound-proofing buildings.

If it appears to the Secretary of State¹ that buildings near a designated aerodrome² require further protection from noise and vibration attributable to the use of the aerodrome, he may by statutory instrument make a scheme requiring the person for the time being managing the aerodrome to make grants towards the cost of insulating those buildings against noise³.

The scheme, made after consultation with the relevant manager⁴ (1) must specify the areas and expenditure in respect of which, the persons in respect of whom, the rate at which, and the conditions on which, grants may be paid⁵; (2) may require the relevant manager to give an applicant a written statement of reasons where a grant is refused⁶; (3) may authorise or require local authorities⁷ to deal with applications and payments as the relevant manager's agents⁸; and (4) may make different provisions with respect to different areas or different circumstances⁹.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'designated aerodrome' see PARA 260 note 4. As to the meaning of 'aerodrome' see PARA 175. As to the meaning of 'Great Britain' see PARA 30 note 1. At the date at which this volume states the law no order designating aerodromes for these purposes had been made under the Civil Aviation Act 1982 s 80, but by virtue of the Interpretation Act 1978 s 17(2)(b) the Civil Aviation (Designation of Aerodromes) Order 1981, SI 1981/651, has effect as if so made. The designated aerodromes for these purposes are Heathrow Airport (London), Gatwick Airport (London) and Stansted Airport (London): see art 2.

3 Civil Aviation Act 1982 s 79(1). Such a scheme need apply only to such classes of buildings as the Secretary of State thinks fit: s 79(1). A statutory instrument containing a scheme is subject to annulment in pursuance of a resolution of either House of Parliament: s 79(8). Such instruments, being local in nature, are not listed in this work.

4 Civil Aviation Act 1982 s 79(6).

5 Civil Aviation Act 1982 s 79(2).

6 Civil Aviation Act 1982 s 79(3).

7 For these purposes, 'local authority' does not include the council of a county in relation to England: Civil Aviation Act 1982 s 79(7) (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 66(1), Sch 18). As to the meaning of 'local authority' generally see PARA 47 note 1.

8 Civil Aviation Act 1982 s 79(4).

9 Civil Aviation Act 1982 s 79(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(iv) Fuel Installations/265. Aviation fuel installations.

(iv) Fuel Installations

265. Aviation fuel installations.

A person who has the management of any aviation fuel installation¹ on an aerodrome² in the United Kingdom³ must not cause or permit any fuel to be delivered to that installation unless he is satisfied that the installation is capable of storing and dispensing the fuel so as not to render it unfit for use in aircraft⁴, that the installation is properly marked⁵, and that the fuel has been sampled at delivery from a vehicle or vessel, is of the correct grade and is fit for use in aircraft⁶. Fuel may not subsequently be dispensed from the installation to an aircraft unless the person in charge is satisfied as the result of sampling that it is fit for such use⁷. A person must not cause or permit any aviation fuel to be dispensed for use in an aircraft if he knows or has reason to believe that the aviation fuel is not fit for use in aircraft⁸.

If it appears to the Civil Aviation Authority ('CAA')⁹ or an authorised person that aviation fuel is intended or likely to be delivered in contravention of any of these provisions¹⁰, the CAA or authorised person may direct the person having the management of the installation not to permit the fuel to be dispensed from that installation until the direction is revoked¹¹.

1 'Aviation fuel installation' means any apparatus or container, including a vehicle, designed, manufactured or adapted for the storage of aviation fuel or for the delivery of such fuel to an aircraft; and 'aviation fuel' means fuel intended for use in aircraft: Air Navigation Order 2005, SI 2005/1970, art 137(6).

2 As to the meaning of 'aerodrome' see PARA 175.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 See the Air Navigation Order 2005, SI 2005/1970, art 137(1)(a)(i). The person in charge of the installation (1) must keep a written record including particulars of grades, quantities and dates of aviation fuel deliveries, of samples taken and of the maintenance and cleaning of the installation; (2) must preserve the written record for a period of 12 months or such longer period as the CAA may in a particular case direct; and (3) must, within a reasonable time after being requested to do so by an authorised person, produce such record to that person: art 137(3). Contravention of art 137(1) or 137(3) renders the offender liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. As to the meaning of 'authorised person' see PARA 254 note 3.

5 See the Air Navigation Order 2005, SI 2005/1970, art 137(1)(a)(ii). See note 4.

6 See the Air Navigation Order 2005, SI 2005/1970, art 137(1)(a)(iii). See note 4.

7 See the Air Navigation Order 2005, SI 2005/1970, art 137(1)(b). Article 137(1) does not apply to aviation fuel removed from one aircraft and intended for use in another aircraft operated by the same operator as the first aircraft: art 137(2). See note 4.

8 Air Navigation Order 2005, SI 2005/1970, art 137(4). Contravention of art 137(4) renders the offender liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.

9 As to the CAA see PARA 50 et seq.

10 Ie any of the provisions of the Air Navigation Order 2005, SI 2005/1970, art 137.

11 See the Air Navigation Order 2005, SI 2005/1970, art 137(5). See note 8. Failure to comply with a direction is an offence: see arts 147, 148, Sch 14.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/266. Regulation of access.

(v) Access

266. Regulation of access.

The Secretary of State¹ may give to any airport operator² or to airport operators generally such directions³ of a general character as appear to the Secretary of State to be necessary or expedient in the interests of national security or of relations with a country or territory outside the United Kingdom⁴. The Secretary of State may also give to any airport operator a direction⁵ requiring him (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction, if the Secretary of State considers it necessary or expedient to give such a direction in the interests of national security⁶.

Where the Secretary of State considers it necessary or expedient for the purposes of discharging or facilitating the discharge of any international obligation of the United Kingdom, he may give to the appropriate person⁷ in relation to any airport a direction⁸ requiring that person, according to the circumstances of the case, to do, or not to do, in connection with any operational activities⁹ relating to the airport, a particular thing specified in the direction¹⁰, or to secure that a particular thing specified in the direction is done or not done in connection with any such activities¹¹.

A person must not disclose, or be required by virtue of any enactment or otherwise to disclose, any direction given or other thing done by virtue of the provisions described above if the Secretary of State has notified him that he is of the opinion that disclosure of that direction or thing is against the interests of national security or of relations with a country or territory outside the United Kingdom, or against the commercial interests of some other person¹².

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'airport' see PARA 228 note 1. As to the meaning of 'airport operator' see PARA 183 note 4.

3 In so far as any direction applying to an airport operator by virtue of the Airports Act 1986 s 30(1), (2) or (3) conflicts with the requirements of the Transport Act 2000 s 93 (see PARA 44) or of an order under s 94 (see PARA 45), the direction must be disregarded: Airports Act 1986 s 30(4A) (added by the Transport Act 2000 s 97, Sch 8 Pt V para 19(1), (2)). However, such a direction takes priority over the requirements of any other enactment or instrument with which it might conflict, and in the event of such a conflict those requirements must accordingly be disregarded: Airports Act 1986 s 30(5) (amended by the Transport Act 2000 Sch 8 Pt V para 19(3)).

The Secretary of State must lay before each House of Parliament a copy of every direction given under the Airports Act 1986 s 30 unless he is of the opinion that disclosure of the direction is against the interests of national security or of relations with a country or territory outside the United Kingdom, or against the commercial interests of any person: s 30(6).

Before giving any relevant direction or directions to a particular person, the Secretary of State must consult that person; and before giving any directions to airport operators generally under s 30(1), the Secretary of State must consult airport operators who appear to him to be likely to be affected by the directions, and organisations representing airport operators as he considers appropriate: s 30(9). As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 Airports Act 1986 s 30(1).

5 As to the validity and operation of directions see note 3.

6 Airports Act 1986 s 30(2).

7 'Appropriate person', in relation to an airport, means the airport operator or an associated company of the airport operator: Airports Act 1986 s 30(4).

8 As to the validity and operation of directions see note 3.

9 'Operational activities', in relation to an airport, means any activities which are carried on wholly or mainly for the benefit of users of the airport or the revenues from which are wholly or mainly attributable to payments by such users (Airports Act 1986 s 30(4)); the Secretary of State may by order make such modifications of this definition as he thinks necessary or expedient having regard to any international obligation of the United Kingdom (s 30(4)). 'User', in relation to an airport, means a person for whom any services or facilities falling within the definition of 'relevant activities' in s 36(1) (see PARA 234 note 9) are provided at the airport, or a person using any of the air transport services operating from the airport: s 82(1). 'Air transport services' means services for the carriage by air of passengers or cargo: s 82(1). As to the meaning of 'modifications' see PARA 233 note 13.

10 Airports Act 1986 s 30(3)(a). Nothing in Pt IV (ss 36-56) is to be construed as prejudicing the generality of s 30(3): s 30(5).

11 Airports Act 1986 s 30(3)(b). See note 10.

12 Airports Act 1986 s 30(7). Any person who in contravention of such a notification discloses any direction given, or other thing done, is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum (s 30(8)(a)), or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both (s 30(8)(b)). As to the statutory maximum see PARA 43 note 12.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/267. Right of access to aerodromes and other places.

267. Right of access to aerodromes and other places.

The Civil Aviation Authority ('CAA')¹ and any authorised person² have the right of access at all reasonable times:

- 184 (1) to any aerodrome³, for the purpose of inspecting it⁴;
- 185 (2) to any aerodrome or any other place where an aircraft has landed, for the purpose of:
 - 1
 - 1. (a) inspecting any aircraft on the aerodrome or which has landed in that place⁵;
 - 2. (b) inspecting any document which the CAA or authorised person has power to demand⁶; or
 - 3. (c) detaining any aircraft on the aerodrome or the aircraft which has landed in that place⁷;
 - 2
 - 186 (3) to any building or place from which an air traffic control service⁸ is being provided or where any air traffic service equipment⁹ is situated for the purpose of:
 - 3
 - 4. (a) inspecting any equipment used or intended to be used in connection with the provision of a service to an aircraft in flight¹⁰ or on the ground¹¹; or
 - 5. (b) inspecting any document or record¹².
- 4

Intentionally obstructing or impeding a person acting in the exercise of these powers is an offence¹³.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'authorised person' see PARA 254 note 3.

3 As to the meaning of 'aerodrome' see PARA 175. Access to a government aerodrome or to an aerodrome owned or managed by the CAA may only be obtained with the permission of the person in charge of it: Air Navigation Order 2005, SI 2005/1970, art 145(2). As to such aerodromes see PARA 178.

4 Air Navigation Order 2005, SI 2005/1970, art 145(1)(a).

5 Air Navigation Order 2005, SI 2005/1970, art 145(1)(b), (c). As to the right to inspect aircraft see PARAS 342, 412.

6 Air Navigation Order 2005, SI 2005/1970, art 145(1)(b), (c). As to the right to demand documents see PARA 486 et seq.

7 Air Navigation Order 2005, SI 2005/1970, art 145(1)(b), (c). As to the right to detain aircraft see PARA 436 et seq.

8 As to the meaning of 'air traffic control service' see PARA 161 note 2.

9 I.e. air traffic service equipment requiring approval under the Air Navigation Order 2005, SI 2005/1970, art 124: see PARA 546.

10 As to the meaning of 'flight' see PARA 530.

11 Air Navigation Order 2005, SI 2005/1970, art 145(1)(d)(i).

12 Air Navigation Order 2005, SI 2005/1970, art 145(1)(d)(ii). As to the keeping of records at aerodromes see PARA 254.

13 Air Navigation Order 2005, SI 2005/1970, art 146. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

UPDATE

267 Right of access to aerodromes and other places

TEXT AND NOTES 1-12--Also head (4), to any building or place from which a certified training provider is carrying on business for the purpose of inspecting (a) any facilities, equipment or accommodation used or intended to be used in connection with the provision of training; and (b) any document or record which it or he has power to demand under SI 2005/1970 art 119B: SI 2005/1970 art 145(1)(e) (added by SI 2009/1742).

NOTES 5-7--SI 2005/1970 art 145(1)(c) amended: SI 2009/1742.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/268. Trespass on aerodromes.

268. Trespass on aerodromes.

Any person who trespasses on any land which forms part of a licensed aerodrome¹ is liable on summary conviction to a fine², but no one is so liable unless it is proved that, at the material time, notices warning trespassers of their liability under this provision were posted so as to be readily seen and read by members of the public, in such positions on or near the boundary of the aerodrome as appear to the court to be proper³.

1 As to the meaning of 'aerodrome' see PARA 175. As to the licensing of aerodromes see PARAS 226-227.

2 Civil Aviation Act 1982 s 39(1). The penalty is a fine not exceeding level 3 on the standard scale: see s 39(1) (amended by the Anti-Terrorism, Crime and Security Act 2001 s 83(1)). As to the standard scale see PARA 50 note 8. As to offences relating to security at aerodromes see further PARA 352.

3 Civil Aviation Act 1982 s 39(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/269. Access to government aerodromes.

269. Access to government aerodromes.

With the concurrence of the Secretary of State¹, the Civil Aviation Authority ('CAA')² may cause to be notified³, subject to such conditions as it thinks fit, any government aerodrome⁴, as an aerodrome available for the take-off and landing of aircraft engaged on flights for the purpose of the public transport⁵ of passengers⁶ or for instruction in flying⁷ or of any classes of such aircraft⁸.

1 As to the Secretary of State see PARA 33.

2 As to the CAA see PARA 50 et seq.

3 As to the meaning of 'notified' see PARA 178 note 6.

4 As to the meaning of 'government aerodrome' see PARA 178; and as to the meaning of 'aerodrome' see PARA 175.

5 As to public transport see PARA 363.

6 As to the meaning of 'passenger' see PARA 362 note 5.

7 As to instruction in flying see PARA 454.

8 Air Navigation Order 2005, SI 2005/1970, art 127.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/270. Prohibition on discrimination.

270. Prohibition on discrimination.

The person in charge of any aerodrome¹ in the United Kingdom² which is open for public use³ by aircraft registered in the United Kingdom⁴, whether or not the aerodrome is a licensed aerodrome⁵, must cause the aerodrome and all of its air navigation facilities to be available for use by aircraft registered in other contracting states⁶ or in any part of the Commonwealth⁷ on the same terms and conditions as for use by aircraft registered in the United Kingdom⁸.

1 As to the meaning of 'aerodrome' see PARA 175.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 As to licences for public use see PARA 227.

4 As to the registration of aircraft see PARA 367 et seq.

5 As to the meaning of 'licensed aerodrome' see PARA 226 note 10.

6 As to the meaning of 'contracting state' see PARA 367 note 4.

7 As to the meaning of 'the Commonwealth' see PARA 367 note 3.

8 Air Navigation Order 2005, SI 2005/1970, art 130. The penalty for contravention is, on summary conviction, a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 8. As to the duty not to discriminate see PARA 249.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/271. Restrictions on the use of certain aerodromes.

271. Restrictions on the use of certain aerodromes.

An aircraft engaged on a flight for the purpose of the public transport¹ of passengers², or of instruction in flying³, or of carrying out flying tests⁴, may not take off or land⁵ at any place in the United Kingdom⁶ other than:

- 187 (1) an aerodrome⁷ licensed⁸ for the take off and landing of such aircraft⁹; or
- 188 (2) a government aerodrome¹⁰ notified¹¹ as available¹² for the take-off and landing of such aircraft or in respect of which the person in charge has given his permission for the particular aircraft to take off or land, as the case may be¹³.

The taking off or landing must be in accordance with any condition subject to which the aerodrome may have been licensed or notified or subject to which such permission may have been given¹⁴.

The provisions described above apply to all aircraft so engaged with very few exceptions, which concern mainly aircraft engaged on non-scheduled flights¹⁵ and gliders being flown under arrangements made by a flying club and carrying no person other than a club member¹⁶.

1 As to public transport see PARA 363.

2 As to the meaning of 'passenger' see PARA 362 note 5.

3 As to instruction in flying see PARA 454.

4 As to flying tests for pilots' licences and ratings see the Air Navigation Order 2005, SI 2005/1970, Sch 8; and PARA 444 et seq.

5 As to the meaning of 'to land' see PARA 226 note 5. The penalty for an offence is, on summary conviction, a fine not exceeding level 4 on the standard scale: Air Navigation Order 2005, SI 2005/1970, art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

6 As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 As to the meaning of 'aerodrome' see PARA 175.

8 As to the licensing of aerodromes see PARAS 226-227.

9 See the Air Navigation Order 2005, SI 2005/1970, art 126(1)(a), (2)(a), (b). The penalty for contravention of art 126 is, on summary conviction, a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A.

10 As to the meaning of 'government aerodrome' see PARA 178.

11 As to the meaning of 'notified' see PARA 178 note 6.

12 As to availability see PARA 269.

13 See the Air Navigation Order 2005, SI 2005/1970, art 126(1)(b), (2)(a), (b).

14 Air Navigation Order 2005, SI 2005/1970, art 126(1). Nothing in art 126(1) is to apply to or in relation to an aircraft flying under and in accordance with the terms of a police air operator's certificate: art 126(4). As to police air operator's certificates see PARAS 99-100.

15 See Air Navigation Order 2005, SI 2005/1970, art 126(2)(b)(i), (c) (aeroplanes of a maximum total weight authorised not exceeding 2,730 kg, helicopters and gyroplanes). The obligation to use licensed aerodromes or government aerodromes applies to aeroplanes of a maximum total weight authorised not exceeding 2,730 kg engaged on a flight intended to begin and end at the same aerodrome, or on a flight for the purpose of the public transport of passengers at night (art 126(2)(b)(ii), (iv)) and to all aircraft mentioned when engaged on a flight for the purpose of instruction in flying or a flying test (art 126(2)(b)(iii), (c)). As to the meaning of 'maximum total weight authorised' see PARA 363 note 9.

16 See the Air Navigation Order 2005, SI 2005/1970, art 126(2)(d).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/272. Traffic distribution rules.

272. Traffic distribution rules.

The Secretary of State¹ may make rules² for the purposes of distributing air traffic between two or more airports serving the same area in the United Kingdom³. Such rules are known as 'traffic distribution rules'⁴. Before making traffic distribution rules, the Secretary of State must consult the Civil Aviation Authority ('CAA')⁵, which must in turn consult any airport and aircraft operators⁶ likely to be affected by the rules⁷ and any relevant organisation representing such operators, before it can give its advice to the Secretary of State⁸.

The traffic distribution rules may specify classes or descriptions⁹ of air traffic which are permitted to use any of the relevant airports¹⁰, impose prohibitions or restrictions in relation to the use of any of those airports by air traffic of a specified class or description¹¹, and provide for their coming into operation at such time or in such circumstances as they specify¹². Nothing else may be included in the rules¹³.

The CAA must take into account any traffic distribution rules in force when it is performing its air transport licensing functions¹⁴ and route licensing functions¹⁵ so as to prevent any conflict¹⁶.

1 As to the Secretary of State see PARA 33.

2 Rules made under the Airports Act 1986 s 31 (see the text and notes 3-16), not being made by statutory instrument, are not recorded in this work.

3 See the Airports Act 1986 s 31(1). As to the meaning of 'airport' see PARA 228 note 1. As to the meaning of 'United Kingdom' see PARA 30 note 1. The reference to airports serving the same area in the United Kingdom is a reference to airports in the case of which a substantial number of the passengers departing from, or arriving at, the airports by air (other than those interrupting their flight there or transferring from one flight to another) have as their original points of departure, or (as the case may be) as their ultimate destinations, places situated within the same area in the United Kingdom: s 31(6). As to the meaning of 'passenger' see PARA 362 note 5.

4 Airports Act 1986 s 31(1).

5 As to the CAA see PARA 50 et seq.

6 As to the meaning of 'airport operator' see PARA 183 note 4. As to aircraft operators see PARA 437.

7 Airports Act 1986 s 31(4)(a), (b).

8 Airports Act 1986 s 31(4)(c). As to the matters to be taken into account by the CAA when giving advice see PARA 275. Requirements for consultation are satisfied provided the subject matter of the rules is contained in the CAA's advice and the rules are made within five years of the giving of the advice: s 31(5).

9 Any class or description may be framed by reference to any matters or circumstances whatever: Airports Act 1986 s 29(2).

10 Airports Act 1986 s 31(3)(a).

11 Airports Act 1986 s 31(3)(b).

12 Airports Act 1986 s 31(3)(c).

13 See the Airports Act 1986 s 31(3).

14 'Air transport licensing functions' means the functions conferred on the CAA in relation to the grant of such licences as are referred to in the Civil Aviation Act 1982 s 64(1)(a) (see PARA 106) and in relation to the

revocation, suspension or variation of such licences (whether on the application of any person or otherwise): Airports Act 1986 s 29(1). As to the air transport licensing functions of the CAA see PARA 101 et seq.

15 'Route licensing functions' means the functions conferred on the CAA in relation to the grant of such licences as are referred to in the Civil Aviation Act 1982 s 69A(1)(a) (see PARA 107) and in relation to the revocation, suspension or variation of such licences (whether on the application of any person or otherwise): Airports Act 1986 s 29(1) (amended by SI 1992/2992).

16 Airports Act 1986 s 31(2) (amended SI 1992/2992).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/273. Power to limit aircraft movements.

273. Power to limit aircraft movements.

Where it appears to the Secretary of State¹ that the existing runway capacity of a particular airport² is not fully utilised for a substantial proportion of the time during which it is available for take-off and landing³, the Secretary of State may make an order (an 'aircraft movement limit order') imposing either an overall limit on the number of aircraft movements⁴ during a specified period⁵, or such other limits to apply to aircraft movements in circumstances or cases specified in the order as the Secretary of State thinks fit⁶.

Before making an order, the Secretary of State must consult the Civil Aviation Authority ('CAA')⁷, the airport operator⁸ to be affected by the order, other aircraft operators⁹ who may also be so affected and their representative organisations, as well as local authorities¹⁰ which may be concerned by operations at the airport¹¹.

An order may provide that some aircraft movements are not to be taken into account in certain circumstances and provide for the manner in which the number of those movements is calculated¹². An order may neither establish a level of movements lower than the highest level of any corresponding movements at the airport during any equivalent period within the last three years prior to the order¹³, nor limit the number of movements to a number lower than that for the time being permitted by a previous order¹⁴.

The CAA has a duty to take into account the existence of any aircraft movement limitation at any particular airport when it is exercising its air transport licensing functions¹⁵ and route licensing functions¹⁶. It is the duty of the airport operator to ensure compliance with any aircraft movement limit imposed at his airport¹⁷.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'airport' see PARA 228 note 1.

3 Airports Act 1986 s 32(2).

4 'Movement' in relation to an airport, means a take-off or landing by an aircraft at the airport: Airports Act 1986 s 29(1).

5 See the Airports Act 1986 s 32(1)(a).

6 See the Airports Act 1986 s 32(1)(b). The Stansted Airport Aircraft Movement Limit Order 1987, SI 1987/874 (amended by SI 1996/1619), was made under this provision, but has been revoked by the Stansted Airport Aircraft Movement Limit (Revocation) Order 2004, SI 2004/1946.

No order may be made under the Airports Act 1986 s 32 unless a draft of the order has been laid before and approved by a resolution of each House of Parliament: s 79(3). A draft of an order under s 32 which would otherwise be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument must proceed in that House as if it were not such an instrument: s 79(4).

7 As to the CAA see PARA 50 et seq.

8 As to the meaning of 'airport operator' see PARA 183 note 4.

9 As to aircraft operators see PARA 437.

10 As to the meaning of 'local authority' see PARA 47 note 1; definition applied by the Airports Act 1986 s 32(7)(a).

- 11 Airports Act 1986 s 32(6). As to the matters to be taken into account by the CAA see PARA 275.
- 12 See the Airports Act 1986 s 32(4).
- 13 Airports Act 1986 s 32(5)(a).
- 14 Airports Act 1986 s 32(5)(b).
- 15 As to the meaning of 'air transport licensing functions' see PARA 272 note 14.
- 16 Airports Act 1986 s 32(3) (amended by SI 1992/2992). As to the meaning of 'route licensing functions' see PARA 272 note 15.
- 17 Airports Act 1986 s 32(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/274. Schemes for allocating capacity at airports.

274. Schemes for allocating capacity at airports.

Where an aircraft movement limit order¹ is in force in relation to an airport², or where it appears to the Secretary of State³ that the demand for the use of the airport is getting greater than its operational capacity can manage, the Secretary of State may require, by direction, the Civil Aviation Authority ('CAA')⁴ to prepare a scheme allocating capacity at the airport⁵.

Before giving any such direction the Secretary of State must consult the CAA⁶, and before the CAA submits the scheme to the Secretary of State for approval it must consult the relevant airport operator⁷, any aircraft operator⁸ likely to be affected by the scheme and any appropriate organisation representing airport or aircraft operators⁹.

The scheme may provide for an aircraft operator either to acquire the right to use the airport or to pay a special charge in respect of such use¹⁰. Where the scheme provides for the acquisition of rights, it must specify the manner and period of their allocation, their transferability and any other necessary conditions¹¹. Where the scheme provides for the payment of special charges to the airport operator it may specify different charges for different aircraft operators in different circumstances¹². The scheme may provide that all aircraft operators have to acquire the right to use the airport as well as pay special charges to the airport operator¹³, and may make as many exceptions as it considers relevant¹⁴.

A scheme enters into force when it has been approved by the Secretary of State¹⁵. It may be varied or revoked by the CAA, replaced or not by a subsequent scheme¹⁶. It ceases to have effect if the order limiting aircraft movements at the airport, in pursuance of which the scheme had been made, is revoked¹⁷.

It is the duty of the airport operator to give effect to the scheme while it is in force¹⁸.

1 As to aircraft movement limit orders see PARA 273.

2 As to the meaning of 'airport' see PARA 228 note 1.

3 As to the Secretary of State see PARA 33.

4 As to the CAA see PARA 50 et seq.

5 Airports Act 1986 s 33(1). Any direction of the Secretary of State must specify the matters which are to be dealt with in the scheme: s 33(1).

6 Airports Act 1986 s 33(2).

7 As to the meaning of 'airport operator' see PARA 183 note 4.

8 As to aircraft operators see PARA 437.

9 Airports Act 1986 s 33(6). As to the matters to be taken into account by the CAA see PARA 275.

10 See the Airports Act 1986 s 33(3).

11 See the Airports Act 1986 s 33(4)(a).

12 See the Airports Act 1986 s 33(4)(b).

13 See the Airports Act 1986 s 33(3).

14 Airports Act 1986 s 33(4)(c).

15 Airports Act 1986 s 33(5). The Secretary of State may make any modification to the scheme as he thinks fit after consultation with the CAA, and may specify the date of coming into force of the scheme: s 33(5). As to the meaning of 'modifications' see PARA 233 note 13.

16 See the Airports Act 1986 s 33(8). The revocation or termination of the scheme does not prejudice the recovery of sums owed to the aircraft operator under the scheme: s 33(9).

17 Airports Act 1986 s 33(8).

18 Airports Act 1986 s 33(7).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/275. Matters to be taken into account by the Civil Aviation Authority.

275. Matters to be taken into account by the Civil Aviation Authority.

Where the Civil Aviation Authority ('CAA')¹ is to give advice to the Secretary of State² in so far as the regulation of the use of airports³ is concerned⁴ or where it has been directed to prepare a scheme for allocating capacity at airports⁵, it must take into account⁶:

- 189 (1) such of the international obligations of the United Kingdom⁷ as the Secretary of State may notify to it for these purposes⁸;
- 190 (2) any advice received from the Secretary of State with respect to the relations of the United Kingdom with a country or territory outside the United Kingdom⁹;
- 191 (3) the need to secure the sound development of civil aviation throughout the United Kingdom¹⁰;
- 192 (4) the reasonable interests of users¹¹ of air transport services¹²; and
- 193 (5) any policy considerations notified by the Secretary of State¹³.

The general statutory objectives of the CAA¹⁴ do not apply to these functions¹⁵.

1 As to the CAA see PARA 50 et seq.

2 As to the Secretary of State see PARA 33.

3 As to the meaning of 'airport' see PARA 228 note 1.

4 In accordance with the Airports Act 1986 ss 31-33 (ss 31, 32 as amended); see PARAS 272-274.

5 In accordance with the Airports Act 1986 s 33: see PARA 274.

6 Airports Act 1986 s 34(1).

7 As to the meaning of 'United Kingdom' see PARA 30 note 1.

8 Airports Act 1986 s 34(2)(a).

9 Airports Act 1986 s 34(2)(b).

10 Airports Act 1986 s 34(3)(a). The requirements set out in heads (3)-(5) in the text are subject to those set out in heads (1) and (2) in the text: s 34(2).

11 As to the meaning of 'user' see PARA 266 note 9.

12 Airports Act 1986 s 34(3)(b). See note 10. As to the meaning of 'air transport services' see PARA 266 note 9.

13 Airports Act 1986 s 34(3)(c). See note 10.

14 These are set out in the Civil Aviation Act 1982 s 4: see PARA 52.

15 Airports Act 1986 s 34(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/276. Restrictions under air navigation orders.

276. Restrictions under air navigation orders.

An air navigation order¹ may restrict the availability of airports² to aircraft through the conditions which the Civil Aviation Authority ('CAA')³ may attach to an aerodrome licence⁴; thus such a licence may limit the use of the airport to specified aircraft or to specified circumstances without the need for an order by the Secretary of State⁵.

1 As to air navigation orders see PARA 353 et seq.

2 As to the meaning of 'airport' see PARA 228 note 1.

3 As to the CAA see PARA 50 et seq.

4 As to the licensing of aerodromes see PARAS 226-227.

5 See the Airports Act 1986 s 35; the Air Navigation Order 2005, SI 2005/1970, art 128(2); and PARA 227. As to the Secretary of State see PARA 33. The Airports Act 1986 s 35 extends to Jersey: see the Airports Act 1986 (Jersey) Order 2000, SI 2000/1111. As to the power to limit aircraft movements at airports see PARA 273.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/277. Slot co-ordination.

277. Slot co-ordination.

A 'slot' is the permission given by a co-ordinator in accordance with the legislation relating to slot co-ordination¹ to use the full range of airport infrastructure necessary to operate an air service at a co-ordinated airport² on a specific date and time for the purpose of landing or take-off as allocated by a co-ordinator in accordance with the legislation³. Provision is made for the co-ordinated allocation of airport slots at designated airports within the European Community, for the purpose of ensuring, inter alia, that no air carrier⁴, whether a Community air carrier⁵ or otherwise, is compromised by a shortage or unavailability of slots⁶. A member state is not obliged to designate any airport as schedules facilitated⁷ or co-ordinated⁸. It must not designate an airport as co-ordinated except in accordance with the legislative provisions, which require a thorough capacity analysis to be carried out to determine any shortfall in capacity, taking into account environmental constraints, at the airport in question⁹. It may, however, provide for any airport to be designated as a schedules facilitated airport provided that principles of transparency, neutrality and non-discrimination are met¹⁰. When a capacity sufficient to meet actual or planned operations is provided at a co-ordinated airport, its designation must be lifted¹¹.

The Civil Aviation Authority ('CAA')¹² may be required to publicise decisions on the co-ordination of airports¹³.

1 le EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) on common rules for the allocation of slots at Community airports (amended by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); and the Airports Slot Allocation Regulations 2006, SI 2006/2665.

2 A 'co-ordinated airport' is an airport where, in order to land or take off, it is necessary for an air carrier or any other aircraft operator to have been allocated a slot by a coordinator, with the exception of State flights, emergency landings and humanitarian flights: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 2(g) (substituted by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 2(1).

3 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 2(a) (substituted by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 2(1).

4 'Air carrier' means an air transport undertaking holding a valid operating licence or equivalent at the latest on 31 January for the following summer season or on 31 August for the following winter season: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 2(f)(i) (substituted by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 2(1). For the purpose of EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) arts 4, 8, 8a, 10, the definition of 'air carrier' also includes business aviation operators, when they operate according to a schedule; for the purposes of arts 7, 14; the definition of 'air carrier' also includes all civil aircraft operators: art 2(f)(i). For the purposes of the Airports Slot Allocation Regulations 2006, SI 2006/2665, regs 7, 14-19, the definition also includes all other civil aircraft operators, and for the purposes of reg 9 also includes other business aviation operators when they operate to a schedule: reg 2(1). 'Business aviation' means that sector of general aviation which concerns the operation or use of aircraft by companies for the carriage of passengers or goods as an aid to the conduct of their business, where the aircraft are flown for purposes generally considered not for public hire and are piloted by individuals having, at a minimum, a valid commercial pilot licence with an instrument rating: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 2(m) (added by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 2(1).

5 'Community air carrier' means an air carrier with a valid operating licence issued by a member state in accordance with EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) on licensing of air carriers: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 2(e).

6 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) preamble. Note, however, that the obligations of this Regulation may be suspended in relation to third countries (ie non-member states) which fail to grant comparably fair treatment to Community air carriers: see art 12 (amended by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); and the Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 13.

7 A 'schedules facilitated airport' is an airport where there is potential for congestion at some periods of the day, week or year which is amenable to resolution by voluntary cooperation between air carriers and where a schedules facilitator has been appointed to facilitate the operations of air carriers operating services or intending to operate services at that airport: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 2(i) (added by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 2(1).

8 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 3.1(a) (substituted by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)).

9 See EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 3.1(b), 3.3-3.6 (substituted by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); and the Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 3(3)-(6). An airport which, prior to 30 July 2004, was designated by the Secretary of State in accordance with EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 3 prior to amendment by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)) as a fully co-ordinated airport is deemed to have been designated in accordance with EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 3 (as so amended) as a co-ordinated airport: Airports Slot Allocation Regulations 2006, SI 2006/2665, regs 2(1), 3(2). 'Fully co-ordinated airport' means a co-ordinated airport where, in order to land or take off, during the periods for which it is fully co-ordinated, it is necessary for an air carrier to have a slot allocated by a co-ordinator, in accordance with EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) prior to amendment by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50): Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 2(1). As to the Secretary of State see PARA 33.

10 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 3.2 (amended by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)). An airport which, prior to 30 July 2004, was designated by the Secretary of State in accordance with EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 3 prior to amendment by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)) as a co-ordinated airport is deemed to have been designated in accordance with EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 3 (as so amended) as a schedules facilitated airport: Airports Slot Allocation Regulations 2006, SI 2006/2665, regs 2(1), 3(1). For this purpose, 'co-ordinated airport' means an airport where a co-ordinator has been appointed to facilitate the operations of air carriers operating or intending to operate at that airport, in accordance with Council Regulation 95/93 (OJ L14, 22.1.93, p 1) prior to amendment: Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 2(1).

11 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 3.7 (renumbered and amended by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)).

12 As to the CAA see PARA 50 et seq.

13 See the Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 3(7).

UPDATE

277 Slot co-ordination

NOTE 1--Regulation 95/93 further amended: European Parliament and EC Council Regulation 545/2009 (OJ L167, 29.6.2009, p 24).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/278. Schedules facilitator, airport co-ordinator and co-ordination committee.

278. Schedules facilitator, airport co-ordinator and co-ordination committee.

The managing body of an airport¹ which is designated as a schedules facilitated or co-ordinated airport² must appoint a person as schedules facilitator or airport co-ordinator respectively for that airport³.

It is the duty of each co-ordinator or schedules facilitator to act in an independent, neutral, non-discriminatory and transparent manner⁴, and to perform those duties subject to and in accordance with any reservation of slots⁵ effected by the Secretary of State and notified by the Secretary of State to him⁶. The schedules facilitator must advise air carriers⁷ and recommend alternative arrival and/or departure times when congestion is likely to occur⁸. The co-ordinator is the sole person responsible for the allocation of slots⁹. Airport co-ordinators and schedules facilitators must monitor the conformity of air carriers' operations with the schedules and slots respectively¹⁰, and co-operate to detect inconsistencies in schedules¹¹. They must also participate in international scheduling conferences¹².

A member state must ensure that, in a co-ordinated airport, a co-ordination committee is set up to assist, in a consultative capacity, the airport co-ordinator¹³. Membership of this committee is open at least to the air carriers using the airport regularly and their representative organisations, the managing body of the airport concerned, and representatives of general aviation using the airport regularly¹⁴. The committee is responsible, inter alia, for making proposals concerning, or advising on, increasing the airport's capacity or improving its usage¹⁵, improving traffic conditions, determining the co-ordination parameters¹⁶, establishing guidelines for slot allocation, establishing monitoring methods, and mediating between all parties concerned on complaints on the allocation of slots¹⁷. The committee has particular responsibility for safeguarding the interests of new entrants¹⁸.

1 'Managing body of an airport' means the body which, in conjunction with other activities or otherwise, has the task under national laws or regulations of administering and managing the airport facilities and co-ordinating and controlling the activities of the various operators present at the airport or within the airport system concerned: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) on common rules for the allocation of slots at Community airports, art 2(j) (added by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 2(1). 'Airport system' means two or more airports grouped together and serving the same city or conurbation, as indicated in EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) on access for Community air carriers to intra-Community air routes, Annex II: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 2(h).

2 As to the meaning of 'schedules facilitated airport' and 'co-ordinated airport' see PARA 277 notes 7, 2 respectively.

3 See EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 4.1 (art 4 substituted by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 4(1), (2). No person may be appointed as a schedules facilitator or a co-ordinator unless his appointment has been approved by the Secretary of State following consultation by him with the air carriers who use the airport regularly, their representative organisations, the airport authorities and the co-ordinating committee: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 4.1 (as so substituted); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 4(3). Any original co-ordinator appointed in respect of a co-ordinated airport is deemed to have been duly approved and appointed as the schedules facilitator for that airport (reg 4(7)) and any original co-ordinator appointed in respect of a fully co-ordinated airport is deemed to have been duly approved and appointed as the co-ordinator for that airport (reg 4(8)). No person may act as a schedules facilitator or a co-ordinator unless his appointment is duly approved: reg 4(11). Any person who contravenes reg 4(11) is guilty of an offence (reg 4(12)) and is liable, on summary conviction, to a fine not exceeding the statutory maximum; and, on conviction on indictment, to a fine or to imprisonment for a term not

exceeding two years or to both (reg 20(1)). A person's approval may be withdrawn; see note 4. As to the Secretary of State see PARA 33. As to the statutory maximum see PARA 43 note 12.

4 See EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 4.2 (as substituted: see note 3); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 4(5). The approval of a co-ordinator's appointment may be withdrawn if he has carried out his duties otherwise than in an independent manner: see reg 4(6). No person may be appointed as a co-ordinator unless the managing body is satisfied that (1) that person's functions in his capacity as a co-ordinator are separate or will be separated from the functions of any interested party; and (2) that person's activities in his capacity as a co-ordinator are financed by means of a system that guarantees the co-ordinator's independence: reg 4(4). Any appointment (or deemed appointment) referred to in reg 4 continues unless and until, following consultation by the Secretary of State (see note 3), the Secretary of State determines that such appointment is to cease to have effect by written notice served on the managing body of the airport to which the appointment relates and on the schedules facilitator or co-ordinator for that airport: reg 4(9). If a notice is served in accordance with reg 4(9), an appointment ceases to have effect at the end of the period specified in that notice but without prejudice to any rights or liabilities acquired or incurred by the managing body of the airport to which the appointment relates and the schedules facilitator or co-ordinator at that airport: reg 4(10). No schedules facilitator or co-ordinator or independent reviewer is liable in damages in relation to any exercise or purported exercise of (or failure to exercise) his functions under these provisions except in cases of gross negligence or wilful misconduct: reg 12(1), (2). As to the requirements for notices see reg 21.

5 As to the meaning of 'slot' see PARA 277.

6 See the Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 10. Member states may reserve certain slots at fully co-ordinated airports for certain scheduled domestic services: see EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 9 (substituted by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)).

7 As to the meaning of 'air carrier' see PARA 277 note 4.

8 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 4.4 (as substituted: see note 3).

9 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 4.5 (as substituted: see note 3). He must allocate the slots in accordance with the provisions of the Regulation and make provision so that, in an emergency, slots can also be allocated outside office hours: art 4.5 (as so substituted).

10 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 4.6 (as substituted: see note 3).

11 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 4.7 (as substituted: see note 3). See also art 4.8-4.10 (as amended and added by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)). Air carriers operating or intending to operate at a schedules facilitated or co-ordinated airport must submit to the schedules facilitator or co-ordinator respectively, in the format and within the time-limit specified by the schedules facilitator or co-ordinator, all relevant information requested by them: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 7.1, 1st para (art 7 substituted by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)). In particular, an air carrier must inform the co-ordinator, at the time of the request for allocation, whether it would benefit from the status of new entrant (see note 18), in respect of requested slots: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 7.1, 1st para (as so substituted). For all other airports with no particular designation status, the managing body of the airport must provide, when requested by a co-ordinator, any information in its possession about the planned services of air carriers: art 7.1, 2nd para (as so substituted). Where an air carrier fails to provide such information, unless it can satisfactorily demonstrate that mitigating circumstances exist, or provides false or misleading information, the co-ordinator must not take into consideration the slot request or requests by that air carrier to which the missing, false or misleading information relates; the co-ordinator must give that air carrier the opportunity to submit its observations: art 7.2 (as so substituted).

A penalty of up to £20,000 may be imposed by a co-ordinator or schedules facilitator by written notice served on any air carrier or managing body of an airport with no designation status on each occasion on which that person (1) fails to comply with a request for information made by that coordinator or schedules facilitator pursuant to art 7.1 without reasonable excuse; or (2) in purported compliance with art 7.1, knowingly or recklessly furnishes information which is false in a material particular: Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 7. This is subject to regs 17, 18 and 19, which provide for enforcement procedure, an enforcement code and an independent review: reg 7.

12 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 4.3 (as substituted: see note 3).

13 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 5.1 (art 5 substituted by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 5. The same co-ordination committee may be designated for more than one airport: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 5.1 (as so substituted).

14 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 5.1 (as substituted: see note 13).

15 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 5.1 (as substituted: see note 13).

16 'Co-ordination parameters' means the expression in operational terms of all the capacity available for slot allocation at an airport during each co-ordination period, reflecting all technical, operational and environmental factors that affect the performance of the airport infrastructure and its different sub-systems: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 2(m) (added by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 2(1). At a co-ordinated airport the member state responsible must ensure the determination of the parameters for slot allocation twice yearly, while taking account of all relevant technical, operational and environmental constraints as well as any changes thereto; and this exercise must be based on an objective analysis of the possibilities of accommodating the air traffic: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 6.1 (art 6 substituted by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)). The determination of the parameters and the methodology used as well as any changes thereto must be discussed in detail within the co-ordination committee with a view to increasing the capacity and number of slots available for allocation, before a final decision on the parameters for slot allocation is taken, and all relevant documents must be made available on request to interested parties: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 6.3 (as so substituted). Where the member state does not do so, the co-ordinator must define relevant co-ordination time intervals after consultation of the co-ordination committee and in conformity with the established capacity: art 6.2 (as so substituted).

17 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 5.1 (as substituted: see note 13). As to the procedure of the committee see art 5.2, 5.3 (as so substituted).

18 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) arts 5.1, 10.9 (arts 5, 10 substituted by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)). 'New entrant' means (1) an air carrier requesting, as part of a series of slots, a slot at an airport on any day, where, if the carrier's request were accepted, it would in total hold fewer than five slots at that airport on that day; or (2) an air carrier requesting a series of slots for a non-stop scheduled passenger service between two Community airports where at most two other air carriers operate the same non-stop scheduled service between these airports or airport systems on that day, where, if the air carrier's request were accepted, the air carrier would nonetheless hold fewer than five slots at that airport on that day for that non-stop service; or (3) an air carrier requesting a series of slots at an airport for a non-stop scheduled passenger service between that airport and a regional airport where no other air carrier operates a direct scheduled passenger service between these airports or airport systems on that day, where, if the air carrier's request were accepted, the air carrier would nonetheless hold fewer than five slots at that airport on that day for that non-stop service: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 2(b)(i)-(iii) (art 2(b) substituted by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 2(1). An air carrier holding more than 5% of the total slots available on the day in question at a particular airport, or more than 4% of the total slots available on the day in question in an airport system of which that airport forms part, is not considered as a new entrant at that airport: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 2(b) (as so substituted); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 2(1). 'Series of slots' means at least five slots having been requested for the same time on the same day of the week regularly in the same scheduling period and allocated in that way or, if that is not possible, allocated at approximately the same time: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 2(k) (added by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); Airports Slot Allocation Regulations 2006, SI 2006/2665, reg 2(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/279. Process of slot allocation.

279. Process of slot allocation.

There are detailed provisions relating to the allocation of slots¹. These principally provide:

- 194 (1) that series of slots are allocated from the slot pool² to applicant carriers as permissions to use the airport infrastructure for the purpose of landing or take-off for the scheduling period³ for which they are requested, at the expiry of which they have to be returned to the slot pool⁴;
- 195 (2) that where all slot requests cannot be accommodated to the satisfaction of the carriers concerned, preference must be given to commercial air services and in particular to scheduled services and programmed non-scheduled services⁵;
- 196 (3) that the co-ordinator must take into account additional priority rules and guidelines established by the air transport industry as well as local guidelines recommended by the co-ordination committee⁶ allowing for local conditions, provided that such rules and guidelines do not affect the independent status of the co-ordinator, comply with Community law and aim at improving the efficient use of airport capacity⁷.

Provision is made for the notification and provision of alternative slots⁸, the accommodation of ad hoc slot requests⁹, and the exchange and transfer of slots¹⁰. A member state may in certain circumstances reserve slots¹¹.

Provision is also made for the establishment, at airports where slot allocation takes place, of slot pools containing newly-created slots and all slots not allocated under the above provisions¹². Regular series of slots allocated to carriers which have not been operated sufficiently to qualify for reallocation to that carrier must be placed in a pool unless their non-utilisation has arisen through exceptional circumstances¹³. Slots placed in the pools are distributed among applicant carriers¹⁴.

1 See EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) on common rules for the allocation of slots at Community airports, arts 8-10 (arts 8, 9, 20, and arts 8a, 8b added, by European Parliament and EC Council Regulation 793/2004 (OJ L138, 30.4.2004, p 50)); and the Airports Slot Allocation Regulations 1993, SI 1993/1067, reg 8. As to the meaning of 'slot' see PARA 277.

An air carrier operating at a co-ordinated airport must not repeatedly and intentionally (1) operate air services at times significantly different from the allocated slots; or (2) use slots in a significantly different way from that indicated at the time of allocation, where such use causes prejudice to airport or air traffic operations: reg 14. A co-ordinator may issue a direction, subject to conditions, to such an air carrier, the managing body of an airport or an air traffic services provider for the purpose of securing compliance by an air carrier with this duty: see reg 15(1)-(3), (5). A person to whom such a direction is issued must comply with that direction except to the extent that, in his reasonable opinion, compliance would (or would be likely to) (a) conflict with any other requirement having the force of law including any applicable airport by-laws or air traffic services licence, exemption, approval or designation; (b) prejudice safety; or (c) in the case of a direction served upon the managing body of an airport or an air traffic services provider, incur or increase any cost to or liability of that person: reg 15(4). A penalty of up to £20,000 may be imposed by a co-ordinator by written notice served on any air carrier on each occasion on which that air carrier fails to comply with either of the duties set out in regs 14 and 15(4): reg 16(1). This is subject to regs 17, 18 and 19, which provide for enforcement procedure, an enforcement code and an independent review: reg 16(1). As to persons to whom the duty is owed see reg 16(2), (3). No penalty may be imposed on any person pursuant to reg 16(1) and no other proceedings may be commenced under the Airports Slot Allocation Regulations 1993, SI 1993/1067, in respect of any failure by any person to comply with either of the duties set out in regs 14 and 15(4) to the extent that the person concerned demonstrates that the failure in question was beyond his reasonable control: reg 16(4). As to the requirements for notices see reg 21.

As to the meaning of 'air carrier' see PARA 277 note 4. As to the meaning of 'co-ordinated airport' see PARA 277 note 2. 'Air traffic services provider' means a person who provides air traffic services pursuant to an air traffic services licence, exemption, approval or designation: reg 2(1). As to air traffic services see PARA 546.

2 As to the slot pool see EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 10.

3 'Scheduling period' means either the summer or winter season as used in the schedules of air carriers: EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 2(d).

4 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 8.1 (as substituted: see note 1). This does not apply when the following conditions are satisfied: (1) a series of slots has been used by an air carrier for the operation of scheduled and programmed non-scheduled air services; and (2) that air carrier can demonstrate to the satisfaction of the co-ordinator that the series of slots in question has been operated, as cleared by the co-ordinator, by that air carrier for at least 80% of the time during the scheduling period for which it has been allocated: art 8.2 (as so substituted). In such case that series of slots entitles the air carrier concerned to the same series of slots in the next equivalent scheduling period, if requested by that air carrier within the time-limit referred to in art 7(1) (see PARA 278 note 11): art 8.2 (as so substituted). As to the meaning of 'air carrier' see PARA 277 note 4. As to the airport co-ordinator see PARA 278.

A series of slots that has been allocated to an air carrier for the operation of a scheduled or a programmed non-scheduled air service does not entitle that air carrier to the same series of slots in the next equivalent scheduling period if the air carrier cannot demonstrate to the satisfaction of the co-ordinator that they have been operated, as cleared by the co-ordinator, by that air carrier for at least 80% of the time during the scheduling period for which they have been allocated: art 10.2 (as so substituted). Slots allocated to an air carrier before 31 January for the following summer season, or before 31 August for the following winter season, but which are returned to the co-ordinator for reallocation before those dates are not to be taken into account for the purposes of the usage calculation: art 10.3 (as so substituted).

The entitlement to series of slots referred to in art 8(2) is not to give rise to any claims for compensation in respect of any limitation, restriction or elimination thereof imposed under Community law: see art 8b (as added: see note 1).

5 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 8.3 (as substituted: see note 1). In the case of competing requests within the same category of services, priority must be given for year round operations: art 8.3 (as so substituted).

6 As to the co-ordination committee see PARA 278.

7 EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 8.5 (as substituted: see note 1).

8 See EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 8.6 (as substituted: see note 1).

9 See EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 8.7 (as substituted: see note 1).

10 See EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 8a (as added: see note 1). The flexibility provided for in art 8a may be restricted where its operation would be injurious to competition: see art 11. An air carrier which exchanges or transfers a slot contrary to the requirements of art 8a is guilty of an offence, and is liable, on summary conviction, to a fine not exceeding the statutory maximum; and, on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both: Airports Slot Allocation Regulations 1993, SI 1993/1067, regs 9, 20(1). As to offences by a body corporate or a partnership see reg 20(2)-(4). As to the statutory maximum see PARA 43 note 12.

11 See EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 9 (as substituted: see note 1).

12 See EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 10.1 (as substituted: see note 1); and the Airports Slot Allocation Regulations 1993, SI 1993/1067, reg 11.

13 See EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 10.4 (as substituted: see note 1).

14 See EC Council Regulation 95/93 (OJ L14, 22.1.93, p 1) art 10.5-10.8 (as substituted: see note 1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(v) Access/280. Allocation of scarce capacity.

280. Allocation of scarce capacity.

In order to comply with the Community obligation¹ to ensure a distribution of traffic rights among eligible Community air carriers on the basis of a non-discriminatory and transparent procedure, regulations have been made to set out the regime for distributing such traffic rights where scarce capacity exists². Where the Secretary of State³ believes that within six months there will be scarce capacity on a route, he must notify the CAA of that belief⁴, stating why he believes there will be scarce capacity on the route⁵. The notification may state what issues the Secretary of State believes the CAA will be asked to determine⁶, and may describe the route in any manner the Secretary of State thinks fit⁷. The Secretary of State may not give notification unless he has formed his belief after considering representations from qualifying carriers about the capacity they plan to provide⁸. The CAA must, not later than one month after it receives the notification, publish in its Official Record a notice stating (1) the date from which it considers that it will be necessary to allocate scarce capacity on the route⁹; and (2) that it proposes to invite applications for the allocation of scarce capacity and, if necessary, hold a hearing for the purpose of determining those applications¹⁰.

Where the Secretary of State considers that there is no longer scarce capacity on a route, he must notify the CAA¹¹ and the CAA must, not later than one month after it receives the notification, publish in its Official Record a notice stating that, with effect from the date specified in the notice, the route is no longer a capacity constrained route¹².

Specific provisions¹³ apply where a qualifying carrier operates or wishes to operate an air service on a capacity constrained route¹⁴.

1. The European Parliament and Council Regulation 847/2004 (OJ L157, 30.04.2004, p 7) on the negotiation and implementation of air service agreements between member states and third countries, art 5.

2. See the Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556. 'Scarce capacity' means the capacity which exists for providing air services where the relevant traffic rights are insufficient to enable all qualifying carriers who would wish to operate services on a route, to provide all the services they would wish to provide: reg 2. 'Relevant traffic rights' means the traffic rights granted to the United Kingdom under or by virtue of an air service agreement: reg 2. 'Air service agreement' means an agreement between the United Kingdom and a third country governing aviation relations which is described in European Parliament and Council Regulation 847/2004 (OJ L157, 30.04.2004, p 7) art 1; 'qualifying carrier' means (1) an undertaking which has been granted an air transport licence in accordance with the Civil Aviation Act 1982 s 65 (see PARA 117); or (2) a community air carrier as defined in s 69A(8) (see PARA 105 note 2), which has either obtained its operating licence from the Civil Aviation Authority ('CAA'), or is established in the United Kingdom in accordance with the EC Treaty (Treaty establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179)) art 43 (formerly art 52; renumbered by virtue of the Treaty of Amsterdam (OJ C340, 10.11.97 p 1)); and 'third country' means a state other than a member state: Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, reg 2. As to the CAA see PARA 50 et seq.

3. As to the Secretary of State see PARA 33.

4. Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, reg 4(1).

5. Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, reg 4(2)(a).

6. Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, reg 4(2)(b).

7. Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, reg 4(2)(c).

8. Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, reg 4(3).

9 Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, reg 4(4)(a). For the purposes of the Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, a route becomes a capacity constrained route on the date specified under reg 4(4)(a) and remains as such until the date specified in the notice published under reg 5(2) (see the text to note 12): reg 4(6).

10 Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, reg 4(4)(b). The notice must specify (1) what information will be required by the CAA in connection with the application for the allocation of scarce capacity; and (2) the closing date for applications: reg 4(5).

11 Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, reg 5(1).

12 Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, reg 5(2).

13 See the Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, regs 7-24, making provision as to: restrictions on carriage for reward (reg 7); the CAA's functions in allocating scarce capacity (regs 8, 9); applications for the grant, revocation or variation of a scarce capacity allocation certificate (reg 10); the grant, revocation or variation of a scarce capacity allocation certificate without application being made (reg 11); objections and representations (reg 12); hearings (reg 13); preliminary meetings (reg 14); notice of hearing and providing of information by the CAA (reg 15); procedure at hearings (reg 16); the grant, refusal variation or revocation of a scarce capacity allocation certificate (reg 17); notices (reg 18); scarce capacity allocation certificates (reg 19); enforcement by the CAA (reg 20); power for the CAA to prevent take-off (reg 21); offences (regs 22, 23); and the defence of due diligence (reg 24).

14 See the Civil Aviation (Allocation of Scarce Capacity) Regulations 2007, SI 2007/3556, reg 6.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(vi) Groundhandling/281. Groundhandling services.

(vi) Groundhandling

281. Groundhandling services.

'Groundhandling' means the services provided to airport users¹ at airports². These services include ground administration and supervision³, passenger handling⁴, baggage handling⁵, freight and mail handling⁶, ramp handling⁷, aircraft services⁸, fuel and oil handling⁹, aircraft maintenance¹⁰, flight operations and crew administration¹¹, surface transport¹², and catering services¹³. Provision is made for the opening-up of access to the groundhandling market within the European Union¹⁴, for the purpose of, inter alia, reducing the operating costs of airlines and improving the quality and efficiency of service at airports¹⁵.

1 'Airports user' means any person responsible for the carriage of passengers, mail or freight by air from or to the airport in question: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) on access to the groundhandling market at Community airports, art 2(d); Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). 'Airport' means any area of land especially adapted for the landing, taking off and manoeuvring of aircraft, including the ancillary installations which those operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 2(a); Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1).

2 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 2(e); Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1).

3 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 2(e), Annex para 1; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Ground administration and supervision comprise representation and liaison services with local authorities or any other entity, disbursements on behalf of the airport user, and provision of office space for its representatives, load control, messaging and telecommunications, handling, storage and administration of unit load devices, and any other supervision services before, during or after the flight and any other administrative service requested by the airport user: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 1.

4 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 2; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Passenger handling comprises any kind of assistance to arriving, departing, transfer or transit passengers, including checking tickets and travel documents, registering baggage and carrying it to the sorting area: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 2.

5 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 3; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Baggage handling comprises handling baggage in the sorting area, sorting it, preparing it for departure, loading it on to and unloading it from the devices designed to move it from the aircraft to the sorting area and vice versa, as well as transporting baggage from the sorting area to the reclaim area: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 3.

6 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 4; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Freight and mail handling comprises (1) for freight, physical handling of export, transfer and import freight, handling of related documents, customs procedures and implementation of any security procedure agreed between the parties or required by the circumstances; and (2) for mail, physical handling of incoming and outgoing mail, handling of related documents and implementation of any security procedure agreed between the parties or required by the circumstances: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 4.

7 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 5; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Ramp handling comprises marshalling the aircraft on the ground at arrival and departure, assistance to aircraft packing and provision of suitable devices, communication between the aircraft and the airside supplier of services, the loading and unloading of the aircraft, including the provision and operation of suitable means, as well as the transport of crew and passengers between the aircraft and the terminal, and baggage transport between the aircraft and the terminal, the provision and operation of

appropriate units for engine starting, the moving of the aircraft at arrival and departure, as well as the provision and operation of suitable devices, and the transport, loading on to and unloading from the aircraft of food and beverages: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 5.

8 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 6; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Aircraft services comprise the external and internal cleaning of the aircraft, and the toilet and water services, the cooling and heating of the cabin, the removal of snow and ice, the de-icing of the aircraft, and the rearrangement of the cabin with suitable cabin equipment and the storage of this equipment: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 6.

9 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 7; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Fuel and oil handling comprises the organisation and execution of fuelling and defuelling operations, including the storage of fuel and the control of the quality and quantity of fuel deliveries, and the replenishing of oil and other fluids: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 7.

10 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 8; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Aircraft maintenance comprises routine services performed before flight, non-routine services requested by the airport user, the provision and administration of spare parts and suitable equipment, and the request for or reservation of a suitable parking and/or hangar space: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 8.

11 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 9; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Flight operations and crew administration comprise preparation of the flight at the departure airport or at any other point, in-flight assistance, including re-dispatching if needed, post-flight activities, and crew administration: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 9.

12 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 10; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Surface transport comprises the organisation and carrying out of crew, passenger, baggage, freight and mail transport between different terminals of the same airport, but excluding the same transport between the aircraft and any other point within the perimeter of the same airport, and any special transport requested by the airport user: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 10.

13 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 11; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Catering services comprise liaison with suppliers and administrative management, storage of food and beverages and of the equipment needed for their preparation, cleaning of this equipment, and preparation and delivery of equipment as well as of bar and food supplies: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) Annex para 11.

14 See EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) on access to the groundhandling market at Community airports; and the Airports (Groundhandling) Regulations 1997, SI 1997/2389.

15 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) preamble. See further PARA 282 et seq. Note that the Secretary of State may suspend, wholly or partially, the operation of the Directive in relation to a third country where there is a lack of reciprocity in relation to access to the groundhandling or self-handling market from that country: see art 20; and the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 19 (amended by SI 2004/1256). As to the Secretary of State see PARA 33.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(vi) Groundhandling/282. Categories of airport in relation to groundhandling services.

282. Categories of airport in relation to groundhandling services.

For the purposes of the provisions concerning groundhandling services¹, airports² are divided into the following categories:

- 197 (1) a 'category A airport', which is an airport (a) whose annual traffic is not less than three million passenger movements or 75,000 tonnes of freight; or (b) whose traffic has been not less than two million passenger movements or 50,000 tonnes of freight during the six-month period prior to 1 April or 1 October of the preceding year³;
- 198 (2) a 'category B airport', which is an airport whose annual traffic is not less than two million passenger movements or 50,000 tonnes of freight⁴; and
- 199 (3) a 'category C airport', which is an airport whose annual traffic is not less than one million passenger movements or 25,000 tonnes of freight⁵.

Other airports are not categorised and the application of the regulations varies according to each category of airport⁶.

1 le EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) on access to the groundhandling market at Community airports; and the Airports (Groundhandling) Regulations 1997, SI 1997/2389. As to the meaning of 'groundhandling' see PARA 281.

2 As to the meaning of 'airport' see PARA 281 note 1. In general, these provisions apply to airports in the United Kingdom which are open to commercial traffic, although applicability depends on the category into which a particular airport falls: see the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 5. Nothing in the Airports Act 1986 Pt IV (ss 36-56) (economic regulation of airports: see PARA 228 et seq) prejudices or affects the operation of the Airports (Groundhandling) Regulations 1997, SI 1997/2389: reg 27(2) (added by SI 1998/2918). As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1).

4 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1).

5 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1).

6 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 5.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(vi) Groundhandling/283. Airport users' committees and centralised infrastructures.

283. Airport users' committees and centralised infrastructures.

The managing body of an airport¹ must set up a committee of representatives of airport users² or organisations representing airport users³. All airport users have the right to be on the committee or, if they wish, to be represented on it by an organisation appointed to that effect⁴. The managing body must ensure that, at least once a year, a consultation relating to the application of the provisions concerning groundhandling services⁵ takes place between itself, the airport users' committee and the persons providing groundhandling services at the airport⁶. The consultation must cover, inter alia, the price of the groundhandling services for which a determination has been made⁷ and the organisation of the provision of those services⁸.

On an application from the managing body of an airport, the Civil Aviation Authority ('CAA')⁹ may determine to reserve for that managing body or for another person the management of the centralised infrastructures used for the supply of groundhandling services whose complexity, cost or environmental impact does not allow for division or duplication, such as baggage sorting, de-icing, water purification and fuel-distribution systems¹⁰.

1 le the body which, in conjunction with other activities or not as the case may be, has as its objective under national law or regulation the administration and management of the airport infrastructures, and the co-ordination and control of the activities of the different operators present in the airport or airport system concerned: Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Where an airport or airport system is managed and operated not by a single body but by several separate bodies, each of those bodies is considered part of the managing body of the airport for these purposes, and where only a single managing body is set up for several airports or airport systems, each of those airports or airport systems is considered separately for these purposes: see EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) on access to the groundhandling market at Community airports, art 3; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 3. As to the meaning of 'airport' see PARA 281 note 1. 'Airport system' means two or more airports grouped together and serving the same city or conurbation, as indicated in EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) on access for Community air carriers to intra-Community air routes, Annex II; EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 2(b); Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). Managing bodies of certain airports or, where appropriate, the public authority or any other body which controls it, must take the necessary measures to ensure that suppliers of groundhandling services (see PARA 281) and self-handling airport users (see PARA 284) have the necessary access to airport installations: see regs 5(2)(c), (3)(d), 16, 20.

2 As to the meaning of 'airport user' see PARA 281 note 1.

3 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 5.1; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 6(1).

4 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 5.2; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 6(2).

5 As to the meaning of 'groundhandling', and as to the services comprising groundhandling services for these purposes, see PARA 281.

6 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 13; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 7(1).

7 le pursuant to the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(1)(b): see PARA 285.

8 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 13; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 7(2). Provision is made for appeals to the CAA (see note 9) by any person who is aggrieved by a decision or measure taken pursuant to reg 7 by the managing body: see reg 20(1), Sch 2 Pt I (amended by SI 1998/2918).

9 As to the CAA see PARA 50 et seq. See also in connection with the functions of the CAA the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 21 (substituted by SI 1998/2918).

10 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 8.1; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 14(1). See further EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 8.2; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 14(2)-(5) (reg 14(4) amended, and reg 14(5) added, by SI 1998/2918). The Civil Aviation Act 1982 s 4 (see PARA 52) does not apply to the exercise by the CAA of its functions under these provisions: Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 27(1) (added by SI 1998/2918).

UPDATE

283 Airport users' committees and centralised infrastructures

NOTE 8--SI 1997/2389 Sch 2 further amended: SI 2008/2683.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(vi) Groundhandling/284. Prohibition of restrictions on access to groundhandling market.

284. Prohibition of restrictions on access to groundhandling market.

The managing body¹ of a category A or category B airport² must take the necessary measures to ensure free access by suppliers of groundhandling services³ to the market for the provision of groundhandling services to third parties⁴. The managing body of a category A, category B or category C airport must take the necessary measures to ensure the freedom to self-handle⁵. The managing bodies of other airports⁶ must take the necessary measures to ensure the freedom to self-handle, but only in relation to non-airside groundhandling services⁷.

The Civil Aviation Authority ('CAA')⁸ may, on an application made to it by the managing body of a category A, category B or category C airport, determine that, at the airport or part of the airport, the right to self-handle in relation to one or more airside services is to be limited for such period as the CAA thinks fit⁹. Such a determination may also be made in relation to an airport appearing to the CAA to be about to become a category C airport¹⁰. Where a determination has been made, the number of airport users who may exercise the right to self-handle must be no fewer than two for each category of airside services¹¹. The CAA is under a duty to choose the airport users who may exercise the right to self-handle on the basis of relevant, objective, transparent and non-discriminatory criteria¹².

The CAA may, on an application to it made by the managing body of a category A or category B airport, determine that, at the airport or part of the airport, the number of suppliers authorised to supply one or more airside services to third parties is to be limited¹³. Such a determination may also be made in relation to an airport appearing to the CAA to be about to become a category A or category B airport¹⁴. On its own proposal or on an application made to it by the managing body of the airport concerned, a supplier of groundhandling services or an airport user, the CAA may vary from time to time or revoke such a determination¹⁵. Where the number of suppliers of groundhandling services has been so limited, the Secretary of State, the CAA and the managing body of the airport concerned must not prevent an airport user, whatever part of the airport is allocated to him, from having an effective choice between at least two suppliers of groundhandling services, under certain specified conditions¹⁶.

Suppliers of groundhandling services and airport users who fail to comply with rules imposed upon them to ensure the proper functioning of an airport may be prohibited by the CAA from supplying groundhandling services or, as the case may be, self-handling in certain circumstances¹⁷.

1 As to the managing bodies of airports see PARA 283 note 1.

2 As to the categories of airports see PARA 282. As to the meaning of 'airport' see PARA 281 note 1.

3 As to the meaning of 'groundhandling', and as to the services comprising groundhandling services for these purposes, see PARA 281. 'Supplier of groundhandling services' means any person supplying third parties with one or more categories of groundhandling services, and in specified cases includes a person who sought, or who seeks, or would have wished, to be a supplier of groundhandling services: see EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) on access to the groundhandling market at Community airports, art 2(g); and the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1) (amended by SI 1998/2918).

4 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 6.1; Airports (Groundhandling) Regulations 1997, SI 1997/2389, regs 5(2)(a), 8(a).

5 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 7.1; Airports (Groundhandling) Regulations 1997, SI 1997/2389, regs 5(3)(a), 8(b). 'Self-handling' means a situation in which an airport user directly provides for

himself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services; for these purposes, among themselves airport users are not deemed to be third parties where (1) one holds a majority holding in the other; or (2) a single body has a majority holding in each: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 2(f); Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 2(1). As to the meaning of 'airport user' see PARA 281 note 1.

6 le airports which are not category A, category B or category C airports.

7 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 7.1; Airports (Groundhandling) Regulations 1997, SI 1997/2389, regs 5(3)(a), 8(b). 'Airsides services' means baggage handling, freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft, fuel and oil handling, and ramp handling: reg 2(1); and see PARA 281.

8 As to the CAA see PARA 50 et seq. See also in connection with the functions of the CAA the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 21 (substituted by SI 1998/2918).

9 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 7.2; Airports (Groundhandling) Regulations 1997, SI 1997/2389, regs 5(3)(b), 9(1). The determination must contain specified information: reg 9(2). As to the procedure to be followed on an application under reg 9(1) see reg 9(9), Sch 1 (amended by SI 1998/2918). As to appeals to the Secretary of State by any person who is aggrieved by a determination made by the CAA pursuant to the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 9 see reg 20(2), (3), Sch 2 Pt II (Sch 2 Pt II amended by SI 1998/2918). As to the Secretary of State see PARA 33.

10 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 9(5). See further reg 9(6)-(8). As to appeals see note 9.

11 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 7.2; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 9(2)(c).

12 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 7.2; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 9(3).

13 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 6.2; Airports (Groundhandling) Regulations 1997, SI 1997/2389, regs 5(2)(b), 10(1). The determination must contain specified information: see reg 10(2). As to the procedure to be followed on an application under reg 10(1) see reg 10(9), Sch 1 (as amended: see note 9). Where the CAA has made such a determination, or has varied such a determination (see the text and note 15) and in doing so has altered the number of suppliers authorised to provide one or more groundhandling services, the managing body of the airport concerned must take all necessary measures, in accordance with reg 12, for the organisation of a selection procedure for the suppliers authorised to provide groundhandling services: see regs 12(1), 13 (reg 13 substituted by SI 1998/2918). See also EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 11. As to appeals see the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 20(1), (2), Sch 2 (Sch 2 amended by SI 1998/2918).

14 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 10(4). See further reg 10(5)-(7).

15 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 10(8).

16 See EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 6.4; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 10(10).

17 See the Airports (Groundhandling) Regulations 1997, SI 1997/2389, regs 5(2)(c), (3)(d), 15. As to appeals to the Secretary of State by any person who is aggrieved by a determination made by the CAA pursuant to reg 15 see reg 20(2), Sch 2 Pt II (as amended: see note 13).

UPDATE

284 Prohibition of restrictions on access to groundhandling market

NOTES 9, 13, 17--SI 1997/2389 Schs 1, 2 further amended: SI 2008/2683.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(vi) Groundhandling/285. Restriction of access to groundhandling market where space or capacity is limited.

285. Restriction of access to groundhandling market where space or capacity is limited.

Where at a category A or category B airport¹ specific constraints of available space or capacity, arising in particular from congestion and area utilisation rate, make it impossible to open up the market for groundhandling services², the Civil Aviation Authority ('CAA')³ may, on application made to it by the managing body of the airport concerned⁴, determine:

- 200 (1) to limit the number of suppliers of one or more categories of groundhandling services⁵, other than airside services⁶, to no fewer than two suppliers for each category of groundhandling services at the airport or part of the airport⁷; or
- 201 (2) to reserve to a single supplier one or more airside services at the airport or part of the airport⁸.

In such circumstances the CAA may also:

- 202 (a) in relation to any airport, determine to reserve self-handling⁹ to a limited number of airport users¹⁰ for one or more categories of groundhandling services other than airside services at the airport or part of the airport¹¹; or
- 203 (b) in relation to category A, category B or category C airports only, determine to ban self-handling or restrict it to a single airport user for one or more airside services at the airport or part of the airport¹².

Such determinations¹³ must specify certain information¹⁴. Determinations must not unduly prejudice the aims of the Groundhandling Directive¹⁵, must not give rise to distortions of competition between suppliers of groundhandling services or self-handling airport users or both¹⁶, and must not extend further than necessary¹⁷.

The CAA must notify the European Commission of any such determination made by it at least three months before it takes effect¹⁸. Where the Commission makes a decision¹⁹ either opposing or requiring an amendment to a determination, the CAA must forthwith revoke or, as the case may be, amend that determination²⁰. On an application by the managing body of an airport, the CAA may determine to renew from time to time any determination made by it²¹.

1 As to the categories of airports see PARA 282. As to the meaning of 'airport' see PARA 281 note 1.

2 As to the meaning of 'groundhandling', and as to the services comprising groundhandling services for these purposes, see PARA 281.

3 As to the CAA see PARA 50 et seq. See also in connection with the functions of the CAA the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 21 (substituted by SI 1998/2918).

4 As to the managing bodies of airports see PARA 283 note 1.

5 As to the meaning of 'supplier of groundhandling services' see PARA 284 note 3.

6 As to the meaning of 'airside services' see PARA 284 note 7.

7 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) on access to the groundhandling market at Community airports, art 9.1(a); Airports (Groundhandling) Regulations 1997, SI 1997/2389, regs 5(2)(a), 11(1)

(a). A determination made pursuant to reg 11(1)(a) must be made for a period not exceeding three years: reg 11(5). As to the procedure to be followed on an application under reg 11(1) see reg 11(10), Sch 1 (amended by SI 1998/2918). Where the CAA has made a determination pursuant to the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(1), or renews such a determination (see the text and note 21), the managing body of the airport concerned must take all necessary measures, in accordance with reg 12, for the organisation of a selection procedure for the suppliers authorised to provide groundhandling services: see regs 12(1), 13 (reg 13 substituted by SI 1998/2918). See also EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 11. As to appeals see the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 20(1), (2), Sch 2 (amended by SI 1998/2918).

8 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 9.1(b); Airports (Groundhandling) Regulations 1997, SI 1997/2389, regs 5(2)(a), 11(1)(b). A determination made pursuant to reg 11(1)(b) must be made for a period not exceeding two years: reg 11(6). As to the procedure to be followed on an application and the selection of suppliers see note 7.

9 As to the meaning of 'self-handling' see PARA 284 note 5.

10 As to the meaning of 'airport user' see PARA 281 note 1.

11 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 9.1(c); Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(2)(a). As to the procedure to be followed on an application under the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(2) see reg 11(10), Sch 1 (as amended: see note 7). Where a determination is made pursuant to reg 11(2), the CAA must choose the airport users who may exercise the right to self-handle on the basis of relevant, objective, transparent and non-discriminatory criteria: EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 9.1(c); Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(4). A determination pursuant to reg 11(2) must be made for a period not exceeding three years: reg 11(5).

12 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 9.1(d); Airports (Groundhandling) Regulations 1997, SI 1997/2389, regs 5(3)(c), 11(2)(b).

13 In determinations made pursuant to the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(1) or reg 11(2).

14 See EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 9.2(a), (b); and the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(3).

15 In EC Council Directive 96/67 (OJ L272, 25.10.96, p 36): see art 9.2(i); and the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(7)(a). As to the aims of the Directive see PARA 281.

16 See EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 9.2(ii); and the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(7)(b).

17 See EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 9.2(iii); and the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(7)(c).

18 See EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 9.3; and the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(11).

19 In pursuant to EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 9.5.

20 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(12).

21 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 11(13). A determination made pursuant to reg 11(1)(b) may be renewed only once: reg 11(13). The provisions of reg 11(1)-(12) apply to such an application and the making of a renewal determination: reg 11(14).

UPDATE

285 Restriction of access to groundhandling market where space or capacity is limited

NOTES 7, 11--SI 1997/2389 Schs 1, 2 further amended: SI 2008/2683.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(vi) Groundhandling/286. Access to airport installations.

286. Access to airport installations.

The managing body of an airport¹ or, where appropriate, the public authority or any other body which controls it, must take the necessary measures to ensure that:

- 204 (1) suppliers of groundhandling services² and airport users³ wishing to self-handle⁴ have access to airport installations to the extent necessary for them to carry out their activities⁵;
- 205 (2) any conditions it places upon such access are relevant, objective, transparent and non-discriminatory⁶;
- 206 (3) the space available for groundhandling at the airport is divided among the various suppliers of groundhandling services and self-handling airport users, including new entrants in the field, to the extent necessary for the exercise of their rights and to allow effective and fair competition on the basis of relevant, objective, transparent and non-discriminatory rules and criteria⁷; and
- 207 (4) any fee charged for such access is determined according to relevant, objective, transparent and non-discriminatory criteria⁸.

¹ As to the managing bodies of airports see PARA 283 note 1. As to the meaning of 'airport' see PARA 281 note 1.

² As to the meaning of 'groundhandling', and as to the services comprising groundhandling services for these purposes, see PARA 281. As to the meaning of 'supplier of groundhandling services' see PARA 284 note 3.

³ As to the meaning of 'airport user' see PARA 281 note 1.

⁴ As to the meaning of 'self-handling' see PARA 284 note 5.

⁵ EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) on access to the groundhandling market at Community airports, art 16.1; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 16(a).

⁶ EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 16.1; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 16(b).

⁷ EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 16.2; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 16(c).

⁸ EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 16.3; Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 16(d).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(vi) Groundhandling/287. Civil liability.

287. Civil liability.

Where a person is under an obligation by virtue of any of the provisions concerned with the opening-up of the groundhandling market in airports¹, the person to whom the duty is owed is specified; and, depending on the circumstances, the duty is owed to airport users, or suppliers of groundhandling services, or both². A breach of duty is not a criminal offence but any breach is actionable by any such supplier or, as the case may be, airport user, who, in consequence, suffers, or risks suffering, loss or damage³. Proceedings may not be brought unless:

- 208 (1) the airport user or supplier bringing the proceedings has informed the person with the obligation of the breach or apprehended breach of the duty owed to him and of his intention to bring proceedings in respect of it⁴; and
- 209 (2) they are brought promptly and in any event within three months from the date when grounds for the bringing of proceedings first arose unless the court considers that there is good reason for extending the period within which proceedings may be brought⁵.

1 See PARAS 281-285.

2 See the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 26(1)-(6). As to the meaning of 'airport user' see PARA 281 note 1. As to the meaning of 'groundhandling', and as to the services comprising groundhandling services for these purposes, see PARA 281. As to the meaning of 'supplier of groundhandling services' see PARA 284 note 3.

3 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 26(7).

4 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 26(8)(a).

5 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 26(8)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(vi) Groundhandling/288.
Separation of accounts.

288. Separation of accounts.

Suppliers of groundhandling services¹ at category A and category B airports² and, where they provide groundhandling services at those categories of airports, the managing body of an airport³ and airport users⁴, must rigorously separate the accounts of their groundhandling activities from the accounts of their other activities in accordance with current commercial practice⁵. Failure to comply without reasonable excuse constitutes an offence⁶. A managing body must not cause or permit its groundhandling activities to be subsidised from the revenue it derives from its role as an airport authority⁷. In relation to such managing bodies, airport users or suppliers, the Civil Aviation Authority ('CAA')⁸ must appoint a person to undertake the duties of independent examiner⁹.

The CAA may, by a notice in writing served on any person, require him to furnish to the CAA, in such form and at such times as may be specified in the notice, information of such descriptions as may be specified which relates to the accounts of any person required to separate his accounts under the provisions described above¹⁰. Failure to comply with the notice without reasonable excuse is an offence¹¹, and any person who knowingly or recklessly furnishes information which is false in a material particular is also guilty of an offence¹².

1 As to the meaning of 'groundhandling', and as to the services comprising groundhandling services for these purposes, see PARA 281. As to the meaning of 'supplier of groundhandling services' see PARA 284 note 3.

2 As to the categories of airports see PARA 282. As to the meaning of 'airport' see PARA 281 note 1.

3 As to the managing bodies of airports see PARA 283 note 1.

4 As to the meaning of 'airport user' see PARA 281 note 1.

5 EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) on access to the groundhandling market at Community airports, art 4.1; Airports (Groundhandling) Regulations 1997, SI 1997/2389, regs 5(2)(a), 17(1), (2).

6 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 17(3). The offence is punishable on summary conviction with a fine not exceeding the statutory maximum, and on conviction on indictment with a fine: reg 24(1). As to the statutory maximum see PARA 43 note 12. Provision is made in connection with offences by bodies corporate: see reg 25(1), (2).

7 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 17(4).

8 As to the CAA see PARA 50 et seq. See also in connection with the functions of the CAA the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 21 (substituted by SI 1998/2918).

9 See the Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 18; and see also EC Council Directive 96/67 (OJ L272, 25.10.96, p 36) art 4.2.

10 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 22(1). The person is not compelled to produce any documents which he could not be compelled to produce in civil proceedings in the High Court, or to give any information which he could not be compelled to give in evidence in such proceedings: reg 22(2). Provision is made restricting the disclosure of the information: see regs 23, 24(3).

11 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 22(3). A person who is guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 24(2) (amended by SI 1998/2918). As to the standard scale see PARA 50 note 8.

12 Airports (Groundhandling) Regulations 1997, SI 1997/2389, reg 22(4). The offence is punishable on summary conviction with a fine not exceeding the statutory maximum, and on conviction on indictment with a fine: reg 24(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(vii) Lights and Beacons/289. Aeronautical lights.

(vii) Lights and Beacons

289. Aeronautical lights.

Except with the permission of the Civil Aviation Authority ('CAA')¹ and in accordance with any conditions subject to which the permission may be granted, a person must not establish, maintain or alter the character of (1) an aeronautical beacon² within the United Kingdom³; or (2) any aeronautical ground light (other than an aeronautical beacon) at a licensed aerodrome⁴, or which forms part of the lighting system for use by aircraft taking off from or landing at such an aerodrome⁵. In the case of an aeronautical beacon which is or may be visible from the waters within an area of a general lighthouse authority⁶, the CAA must not give its permission except with the consent of that authority⁷.

A person must not intentionally or negligently damage or interfere with any aeronautical ground light established by or with the permission of the CAA⁸.

1 As to the CAA see PARA 50 et seq.

2 'Aeronautical beacon' means an aeronautical ground light which is visible either continuously or intermittently to designate a particular point on the surface of the earth: Air Navigation Order 2005, SI 2005/1970, art 155(1). 'Aeronautical ground light' means any light specifically provided as an aid to air navigation, other than a light displayed on an aircraft: art 155(1).

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 As to licensed aerodromes see PARAS 226-227.

5 See the Air Navigation Order 2005, SI 2005/1970, art 132(1). The penalty for contravention of the provisions of art 132 is, on summary conviction, a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

6 As to the meaning of 'general lighthouse authority' see the Merchant Shipping Act 1995 s 193; and **SHIPPING AND MARITIME LAW** vol 94 (2008) para 1068 et seq (definition applied by the Air Navigation Order 2005, SI 2005/1970, art 155(1)).

7 Air Navigation Order 2005, SI 2005/1970, art 132(2).

8 Air Navigation Order 2005, SI 2005/1970, art 132(3). As to the penalty for contravention see note 5.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(vii) Lights and Beacons/290. Dangerous lights.

290. Dangerous lights.

A person may not exhibit in the United Kingdom¹ any light which is liable by reason of its glare to endanger aircraft taking off from or landing at an aerodrome² or which, by reason of its liability to be mistaken for an aeronautical ground light³, is liable to endanger aircraft⁴.

If any light which appears to the Civil Aviation Authority ('CAA')⁵ to be such a light is exhibited, the CAA may cause a notice to be served⁶ on the person who is the occupier of the place where the light is exhibited or has charge of the light, directing him, within a reasonable specified time, to take specified steps for extinguishing or screening the light and for preventing for the future the exhibition of any other light which may similarly endanger aircraft⁷. Where such a light is or may be visible from any waters within the area of a general lighthouse authority⁸, the CAA's powers may not be exercised except with that authority's consent⁹.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 As to the meaning of 'aerodrome' see PARA 175.

3 As to the meaning of 'aeronautical ground light' see PARA 289 note 2.

4 Air Navigation Order 2005, SI 2005/1970, art 135(1). The penalty for contravention of art 135(1) or art 135(2) is, on summary conviction, a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 As to the CAA see PARA 50 et seq.

6 The notice may be served either personally or by post, or by affixing it in some conspicuous place near to the light to which it relates: Air Navigation Order 2005, SI 2005/1970, art 135(3).

7 Air Navigation Order 2005, SI 2005/1970, art 135(2). As to the penalty for contravention see note 4. Failure to comply with a direction is an offence: see arts 147(2), 148, Sch 14.

8 As to the meaning of 'general lighthouse authority' see the Merchant Shipping Act 1995 s 193; and **SHIPPING AND MARITIME LAW** vol 94 (2008) para 1068 et seq (definition applied by the Air Navigation Order 2005, SI 2005/1970, art 155(1)).

9 Air Navigation Order 2005, SI 2005/1970, art 135(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(vii) Lights and Beacons/291. Lighting for helicopters at night.

291. Lighting for helicopters at night.

The person in charge of any area in the United Kingdom¹ intended to be used for the take-off or landing of helicopters at night² other than an aerodrome licensed³ for the take-off and landing⁴ of helicopters or a government aerodrome⁵ notified as available for the take-off and landing of helicopters, or in respect of which the person in charge of the aerodrome has given his permission for the particular helicopter to take off or land⁶, must cause to be in operation, whenever a helicopter flying for the purpose of the public transport⁷ of passengers⁸ is taking off or landing at that area by night, such lighting as will enable the pilot of the helicopter in the case of landing, to identify the landing area in flight⁹, to determine the landing direction and to make a safe approach and landing; and in the case of taking off, to make a safe take-off¹⁰.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 'Night' means the time from half an hour after sunset until half an hour before sunrise (both times inclusive), sunset and sunrise being determined at surface level: Air Navigation Order 2005, SI 2005/1970, art 155(1).

3 As to the meaning of 'aerodrome' see PARA 175. As to the licensing of aerodromes see PARAS 226-227.

4 As to the meaning of 'to land' see PARA 226 note 5.

5 As to the meaning of 'government aerodrome' see PARA 178.

6 I.e. a place specified in the Air Navigation Order 2005, SI 2005/1970, art 126(1). Nothing in art 126(1) applies to or in relation to an aircraft flying under and in accordance with the terms of a police air operator's certificate: art 126(4). As to police air operator's certificates see PARAS 99-100.

7 As to public transport see PARA 363.

8 As to the meaning of 'passenger' see PARA 362 note 5.

9 As to the meaning of 'flight' see PARA 530.

10 Air Navigation Order 2005, SI 2005/1970, art 126(3)(a). A helicopter flying for the purpose of the public transport of passengers at night may not take off or land at such a place unless there is in operation there such lighting: art 126(3)(b). The penalty for contravention of art 126 is, on summary conviction, a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(viii) Obstructions/292. Obstructions near licensed aerodromes.

(viii) Obstructions

292. Obstructions near licensed aerodromes.

If the Secretary of State¹ is satisfied that, in order to avoid danger to aircraft flying in darkness or conditions of bad visibility in the vicinity of any licensed aerodrome², provision ought to be made for giving warning to such aircraft, whether by lighting or otherwise, of the presence of any building, structure or erection in that vicinity, he may by order³ authorise the proprietor of the aerodrome⁴, and any person acting under the proprietor's instructions, to execute, install, maintain, operate and, as occasion requires, to repair or alter, any works and apparatus which may be necessary for enabling such warning to be given in the manner specified in the order, and, so far as may be necessary for exercising any of the powers conferred by the order, to enter upon and pass over any land specified in the order, with or without vehicles⁵. No order may be made, however, if it appears to the Secretary of State that satisfactory arrangements have been made and are being carried out for giving warning to aircraft of the presence of a particular building, structure or erection⁶.

1 As to the Secretary of State see PARA 33.

2 'Licensed aerodrome' means any premises which, by virtue of an air navigation order, are for the time being licensed as an aerodrome for public use, but does not include any premises belonging to the Secretary of State: Civil Aviation Act 1982 s 47(10). As to the meaning of 'aerodrome' see PARA 175. As to the licensing of aerodromes see PARAS 226-227. As to licences for public use see PARA 227. As to licensing generally see PARA 92 et seq. As to air navigation orders see PARA 353 et seq.

3 As to the making of such orders and their contents see PARAS 293-294.

4 'Proprietor of the aerodrome' means the person carrying on or entitled to carry on the business of an aerodrome on the premises in question: Civil Aviation Act 1982 s 47(10).

5 Civil Aviation Act 1982 s 47(1).

6 Civil Aviation Act 1982 s 47(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(viii) Obstructions/293. Procedure for making orders relating to obstruction warnings.

293. Procedure for making orders relating to obstruction warnings.

Before making an order relating to obstruction warnings¹, the Secretary of State² must cause to be published, in such manner as he thinks best for informing the persons concerned, notice of the proposal to make the order and of the place where copies of the draft order may be obtained free of charge³, and must take into consideration any representation made to him with respect to the order by any person appearing to him to have an interest in any land which would be affected by it⁴. Representations must be made within a specified period, being not less than two months after publication of the notice⁵. At the end of that period the Secretary of State may make the order with any modifications he thinks proper⁶.

1 See PARA 292.

2 As to the Secretary of State see PARA 33.

3 Civil Aviation Act 1982 s 47(3)(a).

4 Civil Aviation Act 1982 s 47(3)(b).

5 Civil Aviation Act 1982 s 47(3)(b).

6 Civil Aviation Act 1982 s 47(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(viii) Obstructions/294. Contents of order.

294. Contents of order.

Every order relating to obstruction warnings¹ must contain a provision that, except in a case of emergency, no works may be executed on any land in pursuance of the order unless, at least 14 days previously, the proprietor of the aerodrome² concerned has served in the manner specified in the order on the occupier of the land, and on every other person known by the proprietor to have an interest in it, a written notice containing such particulars of the proposed works, and of the manner in which and the time at which it is proposed to execute them, as may be prescribed by or in accordance with the order³. The order must also contain a provision that if within 14 days after service of a notice on any such person the proprietor receives a written intimation of objection on that person's part, specifying the grounds of objection, no steps may be taken in pursuance of the notice without the specific sanction of the Secretary of State⁴, unless and except in so far as the objection is withdrawn⁵.

1 See PARA 292.

2 As to the meaning of 'proprietor of the aerodrome' see PARA 292 note 4. As to the meaning of 'aerodrome' see PARA 175.

3 Civil Aviation Act 1982 s 47(4)(a).

4 As to the Secretary of State see PARA 33.

5 Civil Aviation Act 1982 s 47(4)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(viii) Obstructions/295. Compensation.

295. Compensation.

Every order relating to obstruction warnings¹ must provide for requiring the proprietor of the aerodrome² to which the order relates to pay to any person having an interest in any land affected by the order compensation³ for loss or damage suffered in consequence of the order⁴.

1 See PARA 292.

2 As to the meaning of 'proprietor of the aerodrome' see PARA 292 note 4. As to the meaning of 'aerodrome' see PARA 175.

3 The compensation must be determined, in default of agreement, by a single arbitrator appointed by the Lord Chief Justice: Civil Aviation Act 1982 s 47(4). As to compensation in respect of planning decisions relating to aerodrome safety, etc see PARA 190.

4 Civil Aviation Act 1982 s 47(4). For these purposes, any expense reasonably incurred in connection with the lawful removal of any apparatus installed in pursuance of such an order, and so much of any expense incurred in connection with the repair, alteration, demolition or removal of any building, structure or erection to which the order relates as is attributable to the operation of the order, is deemed to be loss or damage suffered in consequence of the order: s 47(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(viii) Obstructions/296. Obstruction warning orders and ownership of materials.

296. Obstruction warning orders and ownership of materials.

The ownership of anything placed in or affixed to land in pursuance of an order relating to obstruction warnings¹ does not pass to the owner of the land by reason only that the thing is so placed or affixed², and so long as the order is in force in respect of the aerodrome it is an offence wilfully to interfere, without the consent of the proprietor of the aerodrome³, with any works or things which to the knowledge of the person interfering, were executed or placed in, on or over the land in pursuance of the order⁴. It is also an offence wilfully to obstruct a person in the exercise of any of the powers conferred by such an order⁵.

1 See PARA 292.

2 See PARA 193.

3 As to the meaning of 'proprietor of the aerodrome' see PARA 292 note 4. As to the meaning of 'aerodrome' see PARA 175.

4 Civil Aviation Act 1982 s 47(6). The penalty on summary conviction is imprisonment for a term not exceeding six months, or a fine not exceeding level 4 on the standard scale, or both: s 47(7) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 50 note 8.

5 Civil Aviation Act 1982 s 47(7). The penalty on summary conviction is a fine not exceeding level 3 on the standard scale: s 47(7) (as amended: see note 4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(viii) Obstructions/297. Work done by owners of buildings.

297. Work done by owners of buildings.

No order relating to obstruction warnings¹ may operate so as to restrict the doing of any work for the purpose of repairing, altering, demolishing or removing a building, structure or erection, provided that notice of the doing of the work is given as soon as may be to the proprietor of the aerodrome², and that the giving of warning of the presence of the building, structure or erection in the manner provided by the order is not interrupted³.

1 See PARA 292.

2 Civil Aviation Act 1982 s 47(8)(a). As to the meaning of 'proprietor of the aerodrome' see PARA 292 note 4. As to the meaning of 'aerodrome' see PARA 175.

3 Civil Aviation Act 1982 s 47(8)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(viii) Obstructions/298. Property held by statutory undertakers.

298. Property held by statutory undertakers.

Any order relating to obstruction warnings¹ which affects any property held by a statutory undertaker² for the purpose of his undertaking must be so framed as to avoid interference with the proper carrying on of the undertaking³. Except in an emergency, no person may enter in pursuance of such an order upon any land so held, unless he has given the statutory undertaker at least three clear days' notice of his intention so to do; and, when entry is made, the person entering must comply with any reasonable directions given to him by or on behalf of the undertaker to prevent interference with the proper carrying on of the undertaking⁴.

If statutory undertakers show that by reason of the operation of such an order they have been obliged to take special measures to secure the safety of persons thus entering their land or otherwise acting under the order in relation to any of the undertakers' property, the proprietor of the aerodrome⁵ concerned must pay to the undertakers the amount of any expenses reasonably incurred by them⁶.

1 See PARA 292.

2 As to the meaning of 'statutory undertaker' see PARA 216.

3 Civil Aviation Act 1982 s 47(9)(a).

4 Civil Aviation Act 1982 s 47(9)(b). In addition, the provisions of s 47(4), (5) (see PARAS 294-295) must be complied with: s 47(9).

5 As to the meaning of 'proprietor of the aerodrome' see PARA 292 note 4. As to the meaning of 'aerodrome' see PARA 175.

6 Civil Aviation Act 1982 s 47(9)(c). Any dispute as to whether any sum is so payable, or as to the amount of any sum payable, must, unless the parties otherwise agree, be referred for determination to a single arbitrator appointed by the Lord Chief Justice: s 47(9)(c).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(viii) Obstructions/299. Lighting of en-route obstacles.

299. Lighting of en-route obstacles.

The person in charge of an en-route obstacle¹, other than one exempted by the Civil Aviation Authority ('CAA')², must ensure that specified lighting is fitted to the obstacle³ and displayed by night⁴, and must repair or replace any light required to be so displayed which has failed⁵.

1 'En-route obstacle' means any building, structure or erection which is 150 metres or more above ground level other than any such building, structure or erection which is in the vicinity of a licensed aerodrome and to which the Civil Aviation Act 1982 s 47 applies (see PARAS 292-298): Air Navigation Order 2005, SI 2005/1970, art 133(1). As to the meaning of 'licensed aerodrome' see PARA 226 note 10. As to the meaning of 'aerodrome' see PARA 175.

2 These provisions do not apply to any en-route obstacle in respect of which the CAA has granted a permission to the person in charge: Air Navigation Order 2005, SI 2005/1970, art 133(7). A permission may be granted for these purposes in respect of a particular case or class of cases or generally: art 133(8). As to the CAA see PARA 50 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 133(2). The obstacle is required to be fitted with medium intensity steady red lights positioned as close as possible to the top of the obstacle and at intermediate levels spaced so far as practicable equally between the top lights and ground level with an interval not exceeding 52 metres: art 133(2). 'Medium intensity steady red light' means a red light which complies with the characteristics described for a medium intensity Type C light as specified in the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742), Annex 14 (4th Edn, July 2004), Vol 1 (Aerodrome Design and Operations): Air Navigation Order 2005, SI 2005/1970, art 155(1). At each level on the obstacle where lights are required to be fitted, sufficient lights must be fitted and arranged so as to show when displayed in all directions: art 133(5). In any particular case the CAA may direct that an en-route obstacle be fitted with and display such additional lights in such positions and at such times as it may specify: art 133(6). Failure to comply with a direction is an offence: see arts 147(2), 148, Sch 14.

4 Air Navigation Order 2005, SI 2005/1970, art 133(3). As to the meaning of 'night' see PARA 291 note 2.

5 Air Navigation Order 2005, SI 2005/1970, art 133(4). The repair or replacement must be carried out as soon as is reasonably practicable: art 133(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(viii) Obstructions/300. Lighting of wind turbine generators in United Kingdom territorial waters.

300. Lighting of wind turbine generators in United Kingdom territorial waters.

The person in charge of a wind turbine generator¹ (other than one exempted by the Civil Aviation Authority ('CAA'))² which is situated in waters within or adjacent to the United Kingdom³ up to the seaward limits of the territorial sea⁴ and the height⁵ of which is 60 metres or more above the level of the sea at the highest astronomical tide must ensure that it is fitted with at least one medium intensity steady red light⁶ positioned as close as reasonably practicable to the top of the fixed structure⁷ and ensure that by night, any such light is displayed⁸. Where four or more wind turbine generators are located together in the same group⁹, with the permission of the CAA only those on the periphery of the group need be fitted with a light¹⁰.

In the event of the failure of a light which is required to be displayed by night, the person in charge must repair or replace the light as soon as is reasonably practicable¹¹.

1 A 'wind turbine generator' is a generating station which is wholly or mainly driven by wind: Air Navigation Order 2005, SI 2005/1970, art 134(11)(a).

2 These provisions do not apply to any wind turbine generator in respect of which the CAA has granted a permission to the person in charge: Air Navigation Order 2005, SI 2005/1970, art 135(9). Such a permission may be granted in respect of a particular case or class of cases or generally: art 135(10). As to the CAA see PARA 50 et seq.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 As to the territorial sea see **WATER AND WATERWAYS** vol 100 (2009) PARA 31.

5 The height of a wind turbine generator is the height of the fixed structure or if greater the maximum vertical extent of any blade attached to that structure: Air Navigation Order 2005, SI 2005/1970, art 134(11)(b).

6 As to the meaning of 'medium intensity steady red light' see PARA 299 note 3.

7 Air Navigation Order 2005, SI 2005/1970, art 134(1), (2).

8 Air Navigation Order 2005, SI 2005/1970, art 134(6)(a). The required light or lights must, subject to art 134(5), be so fitted as to show when displayed in all directions without interruption: art 134(4). When displayed, the angle of the plane of the beam of peak intensity emitted by the light must be elevated to between 3 and 4 degrees above the horizontal plane; not more than 45% or less than 20% of the minimum peak intensity specified for a light of this type must be visible at the horizontal plane; and not more than 10% of the minimum peak intensity specified for a light of this type must be visible at a depression of 1.5 degrees or more below the horizontal plane: art 134(5).

In any particular case the CAA may direct that a wind turbine generator is to be fitted with and display such additional lights in such positions and at such times as it may specify: art 135(8). Failure to comply with a direction is an offence: see arts 147(2), 148, Sch 14.

9 A wind turbine generator is in the same group as another wind turbine generator if the same person is in charge of both and (1) it is within 2 km of that other wind turbine generator; or (2) it is within 2 km of a wind turbine generator which is in the same group as that other wind turbine generator: Air Navigation Order 2005, SI 2005/1970, art 134(11)(c).

10 Air Navigation Order 2005, SI 2005/1970, art 134(3). When visibility in all directions from every wind turbine generator in a group is more than 5 km the light intensity for any light required to be fitted to any generator in the group and displayed may be reduced to not less than 10% of the minimum peak intensity specified for a light of this type: art 134(7).

- 11 Air Navigation Order 2005, SI 2005/1970, art 134(6)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(viii) Obstructions/301. Control of advertisements and hoardings.

301. Control of advertisements and hoardings.

When exercising their powers to grant or refuse consent for the display of advertisements¹, local planning authorities² must have regard, inter alia, to the safety of persons who may use any aerodrome³, and must in particular consider whether any such display is likely to obscure, or hinder the ready interpretation of, any aid to navigation by air⁴.

1 See the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (in force in relation to England); the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (in force in relation to Wales); and **TOWN AND COUNTRY PLANNING**.

For these purposes, 'advertisement' does not include anything employed wholly as a memorial or as a railway signal or a placard or (in England) any other object borne by an individual or an animal: Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783, reg 2(1); Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 2(1).

2 As to the local planning authorities for these purposes see the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783, reg 2(1); the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 2(2A); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 775.

3 Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783, reg 3(2)(b)(i); Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 4(1)(b)(i). See further **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 776. As to the meaning of 'aerodrome' see PARA 175.

4 Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783, reg 3(2)(b)(ii); Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 4(1)(b)(ii). See further **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 776.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(5) MANAGEMENT AND OPERATION OF AERODROMES/(ix) Ground Markings and Traffic Signals/302. Rules as to ground marks and signals.

(ix) Ground Markings and Traffic Signals

302. Rules as to ground marks and signals.

Detailed rules are laid down in relation to ground marks and signals, which must be complied with by all aircraft within the United Kingdom¹ and by all aircraft registered in the United Kingdom² wherever they may be³. A signal or marking to which a meaning is given by the Rules of the Air⁴, or which is required by those rules to be used in specified circumstances or for a specified purpose, may not be used except with that meaning, in those circumstances or for that purpose⁵. A person in an aircraft or on an aerodrome⁶ or at any place at which an aircraft is taking off or landing⁷ may not make any signal which may be confused with any signal specified in the rules, nor, except with lawful authority, make any signal which he knows or ought reasonably to know to be a signal in use for signalling to or from any of Her Majesty's naval, military or air force aircraft⁸.

The Rules of the Air contain provisions in respect of signals in the signals area⁹, markings for paved runways and taxiways and on unpaved manoeuvring areas¹⁰, signals visible from the ground¹¹, lights and pyrotechnic signals for the control of aerodrome traffic¹², marshalling signals, whether from a marshaller to an aircraft or from an aircraft pilot to a marshaller¹³, and distress, urgency and safety signals¹⁴.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 As to the registration of aircraft see PARA 367 et seq.

3 See the Air Navigation Order 2005, SI 2005/1970, art 95; and the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 2. As to the Rules of the Air generally see PARA 303 et seq.

4 I.e. the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 Section 9 (rr 56-64): see PARA 357.

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 3(1).

6 As to the meaning of 'aerodrome' see PARA 175.

7 As to the meaning of 'to land' see PARA 226 note 5.

8 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 3(2).

9 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 57.

10 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 rr 58, 59.

11 See Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 60.

12 See Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 61.

13 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 rr 62, 63.

14 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 64; and PARA 573.

UPDATE

302 Rules as to ground marks and signals

NOTE 10--SI 2007/734 Sch 1 r 58 amended: SI 2009/2169.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (6) MOVEMENT OF AIRCRAFT ON LAND AND SEA/(i) Aerodrome Traffic Rules/303. Visual signals.

(6) MOVEMENT OF AIRCRAFT ON LAND AND SEA

(i) Aerodrome Traffic Rules

303. Visual signals.

The commander¹ of a flying machine² on, or in the pattern of traffic flying at, an aerodrome³ must observe such visual signals as may be displayed at or directed to him from the aerodrome by the authority of the person in charge of it, and must obey any instructions which may be given to him by means of such signals⁴. However, he is not required to obey such signals if it is inadvisable to do so in the interests of safety⁵.

1 As to the meaning of 'commander' see PARA 456.

2 The Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 rr 38-45 (see PARAS 304-306, 537-538, 564), which are expressed to apply to flying machines, must also be observed, so far as practicable, in relation to all other aircraft: Sch 1 r 38. 'Flying machine' means an aeroplane, a powered lift tilt rotor aircraft, a self-launching motor glider, a helicopter or a gyroplane: Air Navigation Order 2005, SI 2005/1970, art 155(1).

3 As to the meaning of 'aerodrome' see PARA 175.

4 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 39(1) (which is expressed to be subject to Sch 1 r 39(2): see the text to note 5).

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 39(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (6) MOVEMENT OF AIRCRAFT ON LAND AND SEA/(i) Aerodrome Traffic Rules/304. Movement of aircraft on aerodromes.

304. Movement of aircraft on aerodromes.

An aircraft may not taxi on the apron¹ or the manoeuvring area² of an aerodrome without the permission of the person in charge of the aerodrome³ or of the traffic control unit⁴ or aerodrome flight information service unit⁵ notified as being on watch at the aerodrome⁶.

1 'Apron' means the part of an aerodrome provided for the stationing of aircraft for the embarkation and disembarkation of passengers, for loading and unloading of cargo and for parking: Air Navigation Order 2005, SI 2005/1970, art 155(1).

2 As to the meaning of 'manoeuvring area' see PARA 305 note 3.

3 As to airport operators see PARA 183 note 4.

4 As to the meaning of 'air traffic control unit' see PARA 164 note 3.

5 As to the meaning of 'aerodrome flight information service unit' see PARA 558 note 5.

6 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 40. As to the application of Sch 1 r 40 to other aircraft see PARA 303 note 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (6) MOVEMENT OF AIRCRAFT ON LAND AND SEA/(i) Aerodrome Traffic Rules/305. Access to and movement of persons and vehicles on the aerodrome.

305. Access to and movement of persons and vehicles on the aerodrome.

Unless there is a public right of way over it, a person or vehicle may not go onto any part of an aerodrome¹ without the permission of the person in charge of that part of the aerodrome, and must comply with any conditions subject to which that permission may be granted². Similarly, a vehicle or person may not go or move on the manoeuvring area³ of an aerodrome having an air traffic control unit⁴ or an aerodrome flight information service unit⁵ without the permission of that unit, and must comply with any conditions subject to which the permission may be granted⁶. Any such permission may be granted in respect of persons or vehicles generally, or in respect of any particular person or vehicle or any class of person or vehicle⁷.

1 As to the meaning of 'aerodrome' see PARA 175.

2 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 41(1). As to the application of Sch 1 r 41 to other aircraft see PARA 303 note 2.

3 'Manoeuvring area' means the part of an aerodrome provided for the take-off and landing of aircraft and for the movement of aircraft on the surface, excluding the apron and any part of the aerodrome provided for the maintenance of aircraft: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'apron' see PARA 304 note 1.

4 As to the meaning of 'air traffic control unit' see PARA 164 note 3.

5 As to the meaning of 'aerodrome flight information service unit' see PARA 558 note 5.

6 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 41(2). As to the right of way on the ground see PARA 306.

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 41(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (6) MOVEMENT OF AIRCRAFT ON LAND AND SEA/(i) Aerodrome Traffic Rules/306. Right of way on the ground.

306. Right of way on the ground.

On any part of a land aerodrome¹ provided for the use of aircraft and under the control of the person in charge of the aerodrome²:

- 210 (1) flying machines³ and vehicles must give way to aircraft which are taking off or landing⁴;
- 211 (2) vehicles and flying machines which are not taking off or landing must give way to vehicles towing aircraft⁵;
- 212 (3) vehicles which are not towing aircraft must give way to aircraft⁶.

A vehicle must overtake another vehicle on the right hand side of that vehicle and keep to the left when passing another vehicle which is approaching head on or approximately so⁷.

Where there is a risk of collision between two flying machines⁸:

- 213 (a) if the two flying machines are approaching head on or approximately so, each must alter its course to the right⁹;
- 214 (b) if the two flying machines are on converging courses, the one which has the other on its right must give way to the other and avoid crossing ahead of the other unless passing well clear of it¹⁰;
- 215 (c) a flying machine which is being overtaken has the right of way, and the overtaking flying machine must keep out of the way of the other flying machine by altering its course to the left until that other flying machine has been passed and is clear, notwithstanding any change in the relative positions of the two flying machines¹¹.

Notwithstanding any air traffic control clearance¹² it remains the duty of the commander¹³ of an aircraft to take all possible measures to ensure that his aircraft does not collide with any other aircraft or vehicle or with any other obstacle¹⁴. Where an aircraft is being towed on the ground and the commander is not on board, this duty falls to the person in charge of the vehicle towing the aircraft¹⁵.

1 As to the meaning of 'aerodrome' see PARA 175.

2 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 42(1). As to the application of Sch 1 rr 42, 43 to other aircraft see PARA 303 note 2.

3 As to the meaning of 'flying machine' see PARA 303 note 2.

4 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 42(3).

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 42(4).

6 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 42(5).

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 43(6).

8 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 43(1) (which is expressed to be subject to Sch 1 r 42 (see heads (1)-(3) in the text) and Sch 1 r 14(3) (see PARA 563)). As to the avoidance of aerial collisions see PARA 563 et seq.

9 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 43(2).

10 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 43(3).

11 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 43(4), (5).

12 As to the meaning of 'air traffic control clearance' see PARA 556 note 4.

13 As to the meaning of 'commander' see PARA 456.

14 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 42(2) (amended by SI 2008/669).

15 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 42(2A) (added by SI 2008/669).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (6) MOVEMENT OF AIRCRAFT ON LAND AND SEA/(ii) Collisions at Sea/307. Aircraft on or near the water.

(ii) Collisions at Sea

307. Aircraft on or near the water.

The Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996¹ give effect to the International Regulations for Preventing Collisions at Sea 1972 (the 'Collision Regulations 1972')² and apply to seaplanes registered in the United Kingdom³ and on the surface of water anywhere, and other seaplanes on the surface of water in the United Kingdom or the territorial waters of the United Kingdom⁴. Such seaplanes are required to comply with the provisions of the Collision Regulations 1972⁵.

Except with the written permission of the Civil Aviation Authority ('CAA')⁶, an aircraft must not be flown closer than 500 feet to any vessel⁷ unless it is flying under and in accordance with the terms of a police air operator's certificate⁸.

1 Ie the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75: see **SHIPPING AND MARITIME LAW** vol 94 (2008) para 715 et seq.

2 Ie the International Regulations for Preventing Collisions at Sea (London, 20 October 1972; TS 77 (1977); Cmnd 6962): see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 720 et seq.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 2(1) (b). The signals of distress set out in the Collision Regulations 1972 Annex IV do not apply to seaplanes: see the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 3; and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 717.

5 The seaplanes must comply with the Collision Regulations 1972 rr 1-36, Annexes I-III: see the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75, reg 4(1); and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 718.

6 As to the CAA see PARA 50 et seq.

7 See the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 5(1), (3)(b).

8 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(e). As to police air operators' certificates see PARAS 99-100.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/ (6) MOVEMENT OF AIRCRAFT ON LAND AND SEA/(ii) Collisions at Sea/308. Application of shipping provisions to seaplanes.

308. Application of shipping provisions to seaplanes.

Rules may be made under the Dockyard Ports Regulation Act 1865¹ concerning the lights or signals to be carried or used and the steps to be taken to avoid collisions between vessels in dockyard ports². For the purpose of that Act and rules made under it, seaplanes³ are deemed to be vessels when on the surface of the water⁴. Any power or duty conferred or imposed on a conservancy authority⁵ or a harbour authority⁶ by any enactment⁷ to make byelaws⁸ for the regulation of ships or vessels must be construed as including a power or duty to make byelaws for the regulation of seaplanes when on the surface of the water, and also a power to include in the byelaws provisions authorising the harbour master or other officer of the authority to exercise, as respects seaplanes on the surface of the water, all or any of the functions which he is authorised by the enactment in question to exercise as respects ships or vessels⁹. However, the byelaws cannot in any circumstances require, or authorise a harbour master or other officer to require, the dismantling of a seaplane or any part of it or the making of any alteration whatever of the structure or equipment of a seaplane¹⁰.

Where the provisions of the Harbours, Docks and Piers Clauses Act 1847 relating to the exemption of certain vessels from harbour rates¹¹ are incorporated with any statutory provision, the expression 'vessel' is to be deemed to include any aircraft on the surface of the water, being an aircraft which is designed to float or manoeuvre on water¹².

1 See further **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARAS 689, 693, 699.

2 See the Dockyard Ports Regulation Act 1865 s 7; and **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 689.

3 'Seaplane' includes a flying boat and any other aircraft designed to manoeuvre on the water; and, for the purposes of s 97, seaplanes taking off from or alighting on the water are deemed to be on the surface of the water while in contact with it: Civil Aviation Act 1982 s 97(6).

4 Civil Aviation Act 1982 s 97(2).

5 'Conservancy authority' includes all persons entrusted with the function of conserving, maintaining or improving the navigation of a tidal water: see the Merchant Shipping Act 1995 s 313(1); definition applied by the Civil Aviation Act 1982 s 97(6) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 64(c)).

6 'Harbour authority' means, in relation to a harbour, the person who is the statutory harbour authority for the harbour or, if there is no statutory harbour authority for the harbour, the person (if any) who is the proprietor of the harbour or who is entrusted with the function of managing, maintaining or improving the harbour: Merchant Shipping Act 1995 s 313(1) (definition substituted by the Merchant Shipping and Maritime Security Act 1997 s 29(1), Sch 6 para 19(2)(a)); definition applied by the Civil Aviation Act 1982 s 97(6) (as amended: see note 5).

7 'Enactment' includes any provisional order for the time being in force (whether or not it has been confirmed by an Act): Civil Aviation Act 1982 s 97(6).

8 'Byelaws' includes rules and regulations: Civil Aviation Act 1982 s 97(6).

9 Civil Aviation Act 1982 s 97(4). As to the making of byelaws relating to seaplanes on the surface of the water see also s 97(6). This provision applies also to hovercraft: see PARA 361 note 2.

10 Civil Aviation Act 1982 s 97(5).

11 See the Harbours, Docks and Piers Clauses Act 1847 s 28: see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 672.

12 See the Civil Aviation Act 1982 s 97(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(7) CUSTOMS RULES/309. Application of customs rules.

(7) CUSTOMS RULES

309. Application of customs rules.

The provisions of the Customs and Excise Management Act 1979 relating to aircraft¹ apply in relation to all aircraft, including aircraft belonging to or employed in the service of the Crown other than military aircraft².

¹ The Customs and Excise Management Act 1979, which consolidates previous customs enactments, is dealt with largely in **CUSTOMS AND EXCISE**. However, the provisions which closely concern the operation of aircraft are noted in PARAS 310-316. For other provisions concerning aircraft see s 68(5) (aircraft liable to forfeiture if goods which may only be exported if consigned to a particular place or person are delivered to some other person: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1029), s 75 (explosives); and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1024), s 141 (forfeiture of aircraft used in connection with goods liable to forfeiture: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1163).

For the purposes of the Customs and Excise Management Act 1979, 'goods' includes stores and baggage: s 1(1). Goods such as liquor and tobacco carried in an aircraft as merchandise for sale by retail to persons carried in the aircraft may be treated as stores for the purposes of the Customs and Excise Acts: see the Customs and Excise Management Act 1979 s 1(4)-(4B); the Alcoholic Liquor Duties Act 1979 s 4(2); the Tobacco Products Duty Act 1979 s 10(2); and **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 413. 'Customs and Excise Acts' means the Customs and Excise Acts 1979 and any other enactment for the time being in force relating to customs or excise: Customs and Excise Management Act 1979 s 1(1). 'Customs and Excise Acts 1979' means the Customs and Excise Management Act 1979, the Customs and Excise Duties (General Reliefs) Act 1979, the Alcoholic Liquor Duties Act 1979, the Hydrocarbon Oil Duties Act 1979, and the Tobacco Products Duty Act 1979: Customs and Excise Management Act 1979 s 1(1) (definition amended by the Finance (No 2) Act 1992 s 82, Sch 18 Pt II). For provisions as to stores see the Customs and Excise Management Act 1979 s 61; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1025. See also PARAS 312 note 8, 315.

² Customs and Excise Management Act 1979 s 4(1). 'Military aircraft' includes naval and air force aircraft and any aircraft commanded by a person in naval, military or air force service detailed for the purpose of such command: s 4(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(7) CUSTOMS RULES/310. Customs and excise airports.

310. Customs and excise airports.

The Commissioners for Revenue and Customs¹ may approve, for such periods and subject to such conditions and restrictions as they think fit, a part of, or a place at, any customs and excise airport² for the loading and unloading of goods³ and the embarkation and disembarkation of passengers⁴; and may at any time for reasonable cause revoke or vary the terms of any approval so given⁵. References to an 'examination station' are to a part of, or a place at, a customs and excise airport approved under the provisions described above or a place at such an airport specified or approved under the equivalent provision⁶ for goods imported on or after 1 January 1992 from a place outside the customs territory of the Community⁷. Any person contravening or failing to comply with any condition or restriction attaching to an approval by virtue of which a part of, or a place at, a customs and excise airport is an examination station is liable on summary conviction to a fine⁸.

The Commissioners may also approve, in any customs and excise airport, for such periods and subject to such conditions and restrictions as they think fit, places called 'transit sheds'⁹ for the deposit of goods imported and not yet cleared out of charge, including goods not yet reported and entered¹⁰.

1 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

2 'Customs and excise airport' means an aerodrome for the time being designated as a place for the landing or departure of aircraft for the purposes of the Customs and Excise Acts by an order made by the Secretary of State with the concurrence of the Commissioners which is in force under an Order in Council made in pursuance of the Civil Aviation Act 1982 s 60 (see PARA 353); Customs and Excise Management Act 1979 ss 1(1), 21(7) (amended by the Civil Aviation Act 1982 s 109, Sch 15 para 23). 'Aerodrome' means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft: Customs and Excise Management Act 1979 s 1(1). 'Landing' and 'land', in relation to aircraft, include alighting on water: s 1(1). As to the meaning of 'Customs and Excise Acts' see PARA 309 note 1. As to the Secretary of State see PARA 33.

3 As to the meaning of 'goods' see PARA 309 note 1.

4 Customs and Excise Management Act 1979 s 22(1) (s 22 substituted by SI 1991/2724; and amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)).

The Customs and Excise Management Act 1979 s 22 does not apply in relation to goods imported on or after 1 January 1992 from a place outside the customs territory of the Community or to any goods which are moving under the procedure specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 165 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 113) and EC Commission Regulation 2454/93 (OJ L253, 11.11.93, p 1) art 311 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 112); Customs and Excise Management Act 1979 s 22(3) (as so substituted; and amended by SI 1992/3095; and SI 1993/3014). As to the meaning of 'customs territory of the Community' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 21.

5 Customs and Excise Management Act 1979 s 22(2) (as substituted: see note 4).

6 I.e. a place at such an airport specified or approved under EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) art 46: see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 80.

7 Customs and Excise Management Act 1979 ss 1(1), 22A(1) (s 1(1) amended and s 22A added by SI 1991/2724; the Customs and Excise Management Act 1979 s 22A(1) amended by SI 1993/3014).

8 Customs and Excise Management Act 1979 s 22A(2) (as added: see note 7). The fine is an amount of level 3 on the standard scale: s 22A(2) (as so added). As to the standard scale see PARA 50 note 8.

9 As to the meaning of 'transit shed' see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 940.

10 Customs and Excise Management Act 1979 s 25(1) (substituted by SI 1991/2724; and amended by SI 1992/3095). As to the approval of transit sheds see further **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 940.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(7) CUSTOMS RULES/311. Duty to land at and take off from a customs and excise airport.

311. Duty to land at and take off from a customs and excise airport.

Except as permitted by the Commissioners for Revenue and Customs¹:

- 216 (1) the commander² of an aircraft entering the United Kingdom³ from a place outside the United Kingdom⁴ must not cause or permit the aircraft to land⁵ for the first time after its arrival in the United Kingdom, or at any time while it is carrying passengers or goods⁶ brought in that aircraft from a place outside the United Kingdom and not yet cleared, at any place other than a customs and excise airport⁷;
- 217 (2) no person importing from a place within the customs territory of the Community or concerned in so importing any goods in any aircraft may bring the goods into the United Kingdom at any place other than a customs and excise airport⁸;
- 218 (3) no person may depart on a flight to a place or area outside the United Kingdom from any place in the United Kingdom other than a customs and excise airport, and the commander of any aircraft engaged in a flight from a customs and excise airport to a place or area outside the United Kingdom must not cause or permit it to land at any place in the United Kingdom other than a customs and excise airport specified in the application for clearance for that flight⁹.

Heads (1) to (3) above do not apply in relation to any aircraft flying from or to any place or area outside the United Kingdom to or from any place in the United Kingdom which is required by or under any enactment relating to air navigation, or is compelled by accident, stress of weather or other unavoidable cause, to land at a place other than a customs and excise airport¹⁰. In any such case, however, the commander of the aircraft¹¹ (a) must immediately report the landing to an officer of customs and excise¹² or a constable¹³ and on demand must produce to him the journey log book belonging to the aircraft¹⁴; (b) must not, without the consent of an officer, permit any goods carried in the aircraft to be unloaded from, or any of the crew or passengers to depart from, the vicinity of the aircraft¹⁵; and (c) must comply with any directions given by an officer with respect to any such goods¹⁶. No passenger or member of the crew may, without the consent of an officer or a constable, leave the immediate vicinity of the aircraft¹⁷. These provisions do not, however, prohibit the departure of crew or passengers from the vicinity of, or the removal of goods from, an aircraft when that is necessary for reasons of health, safety or the preservation of life or property¹⁸.

Any person contravening or failing to comply with any of the provisions described above is liable to a penalty¹⁹.

¹ As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

² For these purposes, 'commander' includes any person having or taking the charge or command of the aircraft: Customs and Excise Management Act 1979 s 1(1).

³ As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 References in the Customs and Excise Management Act 1979 s 21 to a place or area outside the United Kingdom do not include references to a place or area in the Isle of Man: s 21(8) (added by the Isle of Man Act 1979 s 13, Sch 1 para 4).

5 As to the meaning of 'land' see PARA 310 note 2. As to landings in case of necessity see the text to notes 10-18.

6 As to the meaning of 'goods' see PARA 309 note 1.

7 Customs and Excise Management Act 1979 s 21(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the meaning of 'customs and excise airport' see PARA 310 note 2. See further **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 942.

Section 21(1) does not apply by virtue only of the fact that the aircraft is carrying goods brought in it from a place outside the customs territory of the community: s 21(1A) (added by SI 1991/2724). As to the meaning of 'customs territory of the Community' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 21.

For the restriction on the powers of control of the movement of aircraft into and out of the United Kingdom see the Finance (No 2) Act 1992 s 4; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1174.

8 Customs and Excise Management Act 1979 s 21(2) (amended by SI 1991/2724).

9 Customs and Excise Management Act 1979 s 21(3). As to applications for clearance see PARA 313.

10 Customs and Excise Management Act 1979 s 21(4). As to flying in prohibited areas see PARA 575.

11 Customs and Excise Management Act 1979 s 21(4)(a).

12 'Officer' means, subject to the Customs and Excise Management Act 1979 s 8(2) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 904), a person commissioned by the Commissioners: s 1(1).

13 As to the office of constable see generally **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

14 Customs and Excise Management Act 1979 s 21(4)(a)(i). Although the Customs and Excise Management Act 1979 requires the production of the journey log book, there is no longer a requirement to keep a journey log book. As to the necessity to keep log books generally see PARAS 408, 413, 453.

15 Customs and Excise Management Act 1979 s 21(4)(a)(ii). Section 21(4)(a)(ii), (iii) (see the text to note 16) does not apply in relation to goods brought in the aircraft from a place outside the customs territory of the Community: s 21(4A) (added by SI 1991/2724).

16 Customs and Excise Management Act 1979 s 21(4)(a)(iii). See note 15.

17 Customs and Excise Management Act 1979 s 21(4)(b).

18 Customs and Excise Management Act 1979 s 21(5).

19 See the Customs and Excise Management Act 1979 s 21(6). The penalty on summary conviction is a fine of an amount of level 4 on the standard scale, or imprisonment for a term not exceeding three months, or both: see s 21(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 50 note 8. As from a day to be appointed, the maximum term of imprisonment is increased to 51 weeks: see s 21(6) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 26(1), (2)). At the date at which this volume states the law, no such day had been appointed.

As to proceedings, offences and penalties see the Customs and Excise Management Act 1979 ss 145-146A, 147-152, 154-155, 171; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1175 et seq, 1197 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(7) CUSTOMS RULES/312. Arrival at a customs and excise airport.

312. Arrival at a customs and excise airport.

Provision is made by regulations¹ as to the procedure to be adopted by the commander² of an aircraft³ upon arrival in the United Kingdom⁴ at a customs and excise airport⁵.

Save as the Commissioners for Revenue and Customs⁶ otherwise permit, the commander of an aircraft arriving in the United Kingdom of which report is required⁷ must immediately⁸:

- 219 (1) take the aircraft or cause it to be taken to the examination station⁹ at the customs and excise airport at which the aircraft has arrived¹⁰;
- 220 (2) make report of the aircraft by delivering to the proper officer¹¹ in such form as the Commissioners direct a general declaration, particulars of the goods¹² on board the aircraft, and a list in duplicate of the stores on board the aircraft¹³;
- 221 (3) produce to the proper officer such other documents relating to the flight as the officer may require¹⁴;
- 222 (4) produce to the proper officer all goods in the aircraft except such as are to be carried on to another customs and excise airport or to a foreign destination and are permitted by the proper officer to remain in the aircraft¹⁵;
- 223 (5) unload¹⁶ all goods in the aircraft except such as are to be carried on to another customs and excise airport or to a foreign destination and are permitted by the proper officer to remain in the aircraft¹⁷; and
- 224 (6) unless the proper officer otherwise permits, deposit all goods unloaded from the aircraft in a transit shed¹⁸ at the customs and excise airport¹⁹.

If, through circumstances over which the commander has no control, an aircraft is prevented from being taken to the examination station as required by head (1) above the commander must²⁰ (a) immediately make report of the aircraft as required by head (2) above²¹; and (b) remove all goods in the aircraft to a transit shed or other place as required by the proper officer²².

The Commissioners and the proper officer must exercise such powers so as to secure that the obligations imposed do not²³ prevent, restrict or delay the movement between different member states of any goods or passenger entering or leaving the United Kingdom²⁴.

1 See the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, made under the Customs and Excise Management Act 1979 ss 35(4), 42(1), 66(1)(a) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 952, 957, 1004), which apply to arrival at any customs and excise airport.

2 As to the meaning of 'commander' see PARA 311 note 2. With the exception of the requirement contained in head (1) in the text, any act required to be performed by the commander of an aircraft by virtue of the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4 (see the text to notes 6-22), may, subject to such conditions as the Commissioners for Revenue and Customs see fit, be carried out on his behalf by a responsible person authorised for the purpose by the owner of the aircraft: reg 4(3) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

3 'Aircraft' includes all balloons, kites, gliders, airships and flying machines: Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 2(1).

4 As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 As to the meaning of 'customs and excise airport' see PARA 310 note 2.

6 See note 2.

7 le by the Customs and Excise Management Act 1979 s 35(1): see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 952.

8 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(1) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). Failure to comply with these provisions may lead to a penalty: see eg the Customs and Excise Management Act 1979 s 35(5) (failure to report: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 952); s 35(6) (failure to answer questions: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 952); s 35(7) (breaking bulk, altering stowage etc after aircraft arrives in or over United Kingdom waters: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 952); s 42, and the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, regs 5, 6 (restrictions on unloading of goods and removal from examination station and transit shed: see **CUSTOMS AND EXCISE** vol 12(3) (Reissue) PARA 959); Customs and Excise Management Act 1979 s 49 (forfeiture of goods improperly imported: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 993); s 50 (improper importation of goods: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 994); s 67 (unauthorised unloading in United Kingdom of goods retained on board for export: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1028); s 141 (forfeiture of aircraft used in connection with goods liable to forfeiture: see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1163). As to the scope of the forfeiture provisions of s 141 see *Customs and Excise Comrs v Air Canada* (1990) 1 S & B Av R IV/151, (1990) Times, 15 June, CA. As to proceedings, offences and penalties see the Customs and Excise Management Act 1979 ss 145-146A, 147-152, 154-155, 171; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1175 et seq, PARA 1197 et seq.

9 As to the meaning of 'examination station' see PARA 310.

10 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(1)(a).

11 'Proper' in relation to the person by, with or to whom, or the place at which, anything is to be done, means the person or place appointed or authorised in that behalf by the Commissioners: Customs and Excise Management Act 1979 s 1(1).

12 As to the meaning of 'goods' see PARA 309 note 1.

13 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(1)(b).

14 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(1)(c).

15 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(1)(d).

16 le subject to the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 5 (unloading of goods imported by air): see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 959. As to the removal of unloaded goods imported by air see reg 6; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 959. As to the loading of goods on a departing aircraft see reg 7; PARA 313; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1020.

17 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(1)(e). The provisions of reg 4(1)(e), (f), (2)(b) (see heads (5), (6), (b) in the text) do not have effect for or in respect of any goods imported into the United Kingdom from a place outside the customs territory of the Community or which are moving under the procedure specified in EC Council Regulation 2913/92 (OJ L302, 19.10.92, p 1) (the 'Community Customs Code') art 165 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 113) and EC Commission Regulation 2454/93 (OJ L253, 11.11.93, p 1) art 311 (see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 112): Customs Controls on Importation of Goods Regulations 1991, SI 1991/2724, reg 7, Sch 3 (reg 7 amended by SI 1992/3095; SI 1993/3014). As to the meaning of 'customs territory of the Community' see **CUSTOMS AND EXCISE** vol 12(2) (2007 Reissue) PARA 21.

18 As to the meaning of 'transit shed' see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 940.

19 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(1)(f). See note 17.

20 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(2). See PARA 311.

21 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(2)(a).

22 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 4(2)(b). See note 17.

23 le except in a case falling within the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 9(2): see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 956.

24 Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 9(1) (reg 9 added by SI 1992/3095).
See **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 956.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(7) CUSTOMS RULES/313. Departure from a customs and excise airport.

313. Departure from a customs and excise airport.

Except as permitted by the Commissioners for Revenue and Customs¹, no aircraft may depart from any customs and excise airport² from which it commences, or at which it touches down during, a flight to an eventual destination outside the member states of the European Community and the Isle of Man, until clearance of the aircraft for that departure has been obtained from the proper officer³ at the airport⁴.

The proper officer may at any time refuse clearance of an aircraft and, where clearance has been granted and the aircraft is at any customs and excise airport, may demand that the clearance be returned to him for the purpose of detaining the aircraft in pursuance of any power or duty conferred or imposed by or under any enactment or for the purpose of securing compliance with any provision relating to the importation or exportation of goods⁵.

No person may load⁶ goods for exportation or as stores on an aircraft about to depart on a flight to an eventual destination outside the United Kingdom⁷ and the Isle of Man except at the examination station⁸ at a customs and excise airport or such other place as the Commissioners may permit, and with the authority of the proper officer⁹. No passenger may embark or be permitted by any person to embark on such an aircraft unless he is authorised by the proper officer to embark, and he embarks at the examination station at a customs and excise airport or at such other place as the Commissioners may permit¹⁰.

1 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

2 As to the meaning of 'customs and excise airport' see PARA 310 note 2.

3 As to the meaning of 'proper' see PARA 312 note 11.

4 Customs and Excise Management Act 1979 s 64(1) (amended by the Isle of Man Act 1979 s 13, Sch 1 para 13; by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7); and by SI 1992/3095). The Commissioners may give directions as to the procedure for obtaining clearance, and as to the documents to be produced and information to be supplied by an applicant for clearance: see the Customs and Excise Management Act 1979 s 64(2). If any aircraft required to be cleared departs from any customs and excise airport without a valid clearance, the commander is liable on summary conviction to a penalty of level 3 on the standard scale: s 64(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the meaning of 'commander' see PARA 311 note 2. As to the standard scale see PARA 50 note 8.

If, where any aircraft is required to obtain clearance from any customs and excise airport, any goods are loaded, or are waterborne for loading, into that aircraft at that airport before application for clearance has been made, the goods are liable to forfeiture; and, where the loading or making waterborne is done with fraudulent intent, any person concerned with knowledge of that intent is guilty of an offence and may be arrested: Customs and Excise Management Act 1979 s 64(7) (amended by the Police and Criminal Evidence Act 1984 s 114(1)). As to the meaning of 'goods' see PARA 309 note 1. A person guilty of such an offence is liable on summary conviction to a penalty of the prescribed sum or of three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding six months, or to both, or on conviction on indictment to a penalty of any amount, or to imprisonment for a term not exceeding two years, or to both: Customs and Excise Management Act 1979 s 64(8). As to the prescribed sum see PARA 43 note 12. See further **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1022.

As to proceedings, offences and penalties see ss 145-155, 171 (all as amended); and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1175 et seq, PARA 1197 et seq.

5 See the Customs and Excise Management Act 1979 s 65(1). As to the making of the demand see s 65(2). On the making of a demand the clearance forthwith becomes void, and if the demand is not complied with the commander is liable on summary conviction to a penalty of level 3 on the standard scale: s 65(3) (amended by

virtue of the Criminal Justice Act 1982 ss 38, 46). See further **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1023.

6 As to unauthorised unloading see the Customs and Excise Management Act 1979 s 67; PARA 312 note 8; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1028.

7 As to the meaning of 'United Kingdom' see PARA 30 note 1.

8 As to the meaning of 'examination station' see PARA 310.

9 See the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 7(1); and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1020. As to the general power to make regulations as to exportation under the Customs and Excise Management Act 1979 s 66 see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1004.

10 See the Aircraft (Customs and Excise) Regulations 1981, SI 1981/1259, reg 8; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1021. If any person contravenes or fails to comply with the regulations, he is liable on summary conviction to a penalty of level 4 on the standard scale, and any goods in respect of which the offence was committed are liable to forfeiture: see the Customs and Excise Management Act 1979 s 66(2) (amended by the Finance Act 1981 s 10(2), Sch 7 Pt II para 5; and by virtue of the Criminal Justice Act 1982 ss 38, 46).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(7) CUSTOMS RULES/314. Power to prevent flight of aircraft.

314. Power to prevent flight of aircraft.

Any customs and excise officer¹ or constable² may, if it appears to him that an aircraft is intended or is likely to depart for a destination outside the United Kingdom³ and the Isle of Man from any place other than a customs and excise airport⁴ or from a customs and excise airport before clearance outwards is given⁵, give such instructions and take such steps by way of detention of the aircraft or otherwise as appear to him to be necessary in order to prevent the flight⁶. A person who contravenes any such instructions is liable to a penalty⁷. If an aircraft flies in contravention of any such instruction or flies notwithstanding any steps taken to prevent the flight, the owner, as well as the commander⁸, is similarly liable unless he proves that the flight took place without his consent or connivance⁹.

1 As to the meaning of 'officer' see PARA 311 note 12.

2 As to the office of constable see generally **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 As to the meaning of 'customs and excise airport' see PARA 310 note 2.

5 As to customs clearance see PARA 313.

6 See the Customs and Excise Management Act 1979 s 34(1) (amended by the Isle of Man Act 1979 s 13, Sch 1). For the power to detain an aircraft while certain expenses of watching, guarding or removing goods or protecting the revenue remain unpaid see the Customs and Excise Management Act 1979 s 29; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 947. For other powers to prevent flight see PARA 528. For the restrictions on the power to prevent the flight of an aircraft see the Finance (No 2) Act 1992 s 4; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1174.

7 See the Customs and Excise Management Act 1979 s 34(2). The penalty on summary conviction is a fine of an amount of level 4 on the standard scale, or imprisonment for a term not exceeding three months, or both: see s 34(2) (s 34(2), (3) amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 50 note 8. As from a day to be appointed, the maximum term of imprisonment is increased to 51 weeks: see s 34(2), (3) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 26(1), (4)). At the date at which this volume states the law, no such day had been appointed.

As to proceedings, offences and penalties see the Customs and Excise Management Act 1979 ss 145-146A, 147-152, 154-155, 171; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1175 et seq, PARA 1197 et seq.

8 As to the meaning of 'commander' see PARA 311 note 2.

9 See the Customs and Excise Management Act 1979 s 34(3) (as amended: see note 7). See further **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 949.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(7) CUSTOMS RULES/315. Power to inspect aircraft, etc.

315. Power to inspect aircraft, etc.

The commander¹ of an aircraft must permit a customs and excise officer² at any time to board the aircraft and inspect it and any goods³ loaded in it and all documents relating to the aircraft or to goods or persons carried in it; and an officer has the right of access at any time to any place to which access is required for the purpose of any such inspection⁴.

At any time while an aircraft is at an aerodrome⁵ any officer and any other person duly engaged in preventing smuggling may board the aircraft, and remain there and rummage and search any part of it⁶. The proper officer⁷ has free access to every part of any aircraft at an aerodrome, and may (1) cause any goods to be marked before they are unloaded; (2) lock up, seal, mark or otherwise secure any goods carried on the aircraft or any place or container in which they are carried; and (3) break open any locked place or container of which the keys are withheld⁸. There is a general power to examine and take account of any goods loaded into any aircraft⁹, and any goods found concealed on board are liable to forfeiture¹⁰. There is also power to search any person on board or who has landed from any aircraft and any person at a customs and excise airport¹¹.

1 As to the meaning of 'commander' see PARA 311 note 2.

2 As to the meaning of 'officer' see PARA 311 note 12.

3 As to the meaning of 'goods' see PARA 309 note 1.

4 Customs and Excise Management Act 1979 s 33(1). A person contravening or failing to comply with s 33 is liable on summary conviction to a fine of level 4 on the standard scale or to imprisonment for a term not exceeding three months, or to both: see s 33(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 50 note 8. As from a day to be appointed, the maximum term of imprisonment is increased to 51 weeks: see s 33(4) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 26(1), (3)). At the date at which this volume states the law, no such day had been appointed. See further **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 948.

As to proceedings, offences and penalties see the Customs and Excise Management Act 1979 ss 145-146A, 147-152, 154-155, 171; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1175 et seq, 1197 et seq.

5 As to the meaning of 'aerodrome' see PARA 310 note 2.

6 See the Customs and Excise Management Act 1979 s 27(1) (amended by the Finance Act 1987 s 7(1); and the Finance (No 2) Act 1992 s 10(2)). See further **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 945.

7 As to the meaning of 'proper' see PARA 312 note 11.

8 See the Customs and Excise Management Act 1979 s 28(1) (amended by the Finance (No 2) Act 1992 s 10(3)). See further **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 946. If the lock, mark or seal is wilfully opened, altered or broken or the goods concerned are secretly conveyed away, the commander is liable on summary conviction to a fine of level 4 on the standard scale: see the Customs and Excise Management Act 1979 s 83 (amended by the Isle of Man Act 1979 s 13, Sch 1; and by virtue of the Criminal Justice Act 1982 ss 37, 46); and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1072.

9 See the Customs and Excise Management Act 1979 s 159; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1145.

10 See the Customs and Excise Management Act 1979 s 28(2). As to forfeiture see also ss 139-144; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1155, 1162-1166. If the commander cannot account for missing cargo, or if an aircraft is used to carry anything liable to forfeiture, the aircraft is liable to forfeiture: see ss 90, 141; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1077, 1163. As to the scope of the forfeiture

provisions of s 141 see *Customs and Excise Comrs v Air Canada* (1990) 1 S & B Av R IV/151, (1990) Times, 15 June, CA.

11 See the Customs and Excise Management Act 1979 s 164; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1151.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(7) CUSTOMS RULES/316. Power to inspect aerodromes, etc.

316. Power to inspect aerodromes, etc.

The person in control of any aerodrome¹ must permit an officer² at any time to enter upon and inspect the aerodrome and all buildings and goods on it³.

The person in control of a licensed aerodrome⁴ and, if the Commissioners for Revenue and Customs⁵ so require, the person in control of any other aerodrome, must (1) keep a record of all aircraft arriving at or departing from it; (2) keep that record available and produce it on demand to any officer together with all other documents kept on the aerodrome which relate to the movement of aircraft; and (3) permit an officer to make copies of and take extracts from any such record or document⁶.

There is also power to search any person on board or who has landed from any aircraft and any person at a customs and excise airport⁷.

1 As to the meaning of 'aerodrome' see PARA 310 note 2.

2 As to the meaning of 'officer' see PARA 311 note 12.

3 Customs and Excise Management Act 1979 s 33(2). As to the meaning of 'goods' see PARA 309 note 1.

A person contravening or failing to comply with s 33 is liable on summary conviction to a fine of level 4 on the standard scale or to imprisonment for a term not exceeding three months, or to both: see s 33(4) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 50 note 8. As from a day to be appointed, the maximum term of imprisonment is increased to 51 weeks: see s 33(4) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 26(1), (3)). At the date at which this volume states the law, no such day had been appointed. See further **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 948.

As to proceedings, offences and penalties see the Customs and Excise Management Act 1979 ss 145-146A, 147-152, 154-155, 171; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 1175 et seq, 1197 et seq.

4 As to the licensing of aerodromes see PARA 226.

5 As to the Commissioners for Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

6 See the Customs and Excise Management Act 1979 s 33(3) (amended by virtue of the Commissioners for Revenue and Customs Act 2005 s 50(1), (7)). See note 3.

7 See the Customs and Excise Management Act 1979 s 164; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1151.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(8) IMMIGRATION REQUIREMENTS/317. Entry into United Kingdom of persons from overseas.

(8) IMMIGRATION REQUIREMENTS

317. Entry into United Kingdom of persons from overseas.

Subject to certain exceptions¹, a person who is not a British citizen² may not enter the United Kingdom unless given leave to do so³ by an immigration officer⁴, who may examine persons who arrive in the United Kingdom by aircraft, including transit passengers, members of the crew and others not seeking entry⁵. The commander of the aircraft is required to furnish immigration officers with a passenger list and particulars of the crew⁶. The commander must take all reasonable steps to ensure that persons on board the aircraft do not disembark save in conformity with immigration requirements⁷.

The owner or agent of an aircraft employed to carry passengers for reward must not, without the Secretary of State's approval, arrange for the aircraft to call at an airport in the United Kingdom other than a port of entry⁸ for the purpose of disembarking passengers⁹.

Where a person is refused leave to enter and the airline is directed to remove him¹⁰, the owner of the aircraft in which he arrived is liable to pay the Secretary of State on demand any expenses incurred by the Secretary of State in respect of the custody, accommodation or maintenance of that person for any period (not exceeding 14 days) after his arrival while he was detained¹¹.

1 See the Immigration Act 1971 s 1(3) (arrival from Channel Islands, Isle of Man or Republic of Ireland: see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 94), s 8 (crew members, diplomats and military personnel: see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 87 et seq). As to crew members see also Sch 2 para 12; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 143, 153. As to free movement of persons within the European Community see the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) arts 39, 40 (formerly arts 48, 49 and renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ); EC Council Regulation 1612/68 (OJ L257, 19.10.68, p 2) on freedom of movement for workers within the Community; and European Parliament and EC Council Directive 2004/38 (OJ L158 30.4.2004 p 77) on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states, art 17. As to immigration see further **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 83 et seq.

2 As to British citizenship see the British Nationality Act 1981 ss 1-14, s 36, Sch 2 paras 2-6; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 23 et seq.

3 See the Immigration Act 1971 s 3(1); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 86, 93.

4 See the Immigration Act 1971 s 4(1); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 86, 140.

5 See the Immigration Act 1971 Sch 2 para 2(1); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 93, 143. The owner or agent of an aircraft must supply landing or embarkation cards in such form as the Secretary of State may direct for persons who are not British citizens disembarking or embarking in the United Kingdom, and such persons must produce such cards to immigration officers: see Sch 2 para 5; the Immigration (Landing and Embarkation Cards) Order 1975, SI 1975/65; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 144. As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the Secretary of State see PARA 33.

6 See the Immigration Act 1971 Sch 2 para 27(2)-(5) (substituted by the Immigration, Asylum and Nationality Act 2006 s 31(1), (2)); the Immigration (Particulars of Passengers and Crew) Order 1972, SI 1972/1667; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 146.

7 See the Immigration Act 1971 Sch 2 para 27(1); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 145.

8 The airports designated by the Secretary of State as ports of entry are: Aberdeen, Belfast, Birmingham, Bournemouth (Hurn), Bristol, Cardiff (Wales), East Midlands, Edinburgh, Gatwick-London, Glasgow, Heathrow-London, Leeds/Bradford, Liverpool, Luton, Manchester, Newcastle, Norwich, Prestwick, Southampton, Southend, Stansted-London and Teesside: see the Immigration Act 1971 s 33(3); the Immigration (Ports of Entry) Order 1987, SI 1987/177, Schedule; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 143, 145.

9 See the Immigration Act 1971 Sch 2 para 26(1); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 145.

10 See the Immigration Act 1971 Sch 2 para 8(1); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 152. The direction must be given within two months of the refusal to give leave to enter: see Sch 2 para 8(2); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 152. As to the difficulties in calculating the period see *R v Immigration Officer, ex p Shah* [1982] 2 All ER 264, [1982] 1 WLR 545.

11 See the Immigration Act 1971 Sch 2 para 19(1) (amended by the Asylum and Immigration Act 1996 s 12(1), Sch 2 para 8); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 159.

UPDATE

317 Entry into United Kingdom of persons from overseas

NOTE 6--SI 1972/1667 replaced: Immigration and Police (Passenger, Crew and Service Information) Order 2008, SI 2008/5.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(9) DISEASES AND PESTS/318. Prevention of spread of diseases.

(9) DISEASES AND PESTS

318. Prevention of spread of diseases.

Provision has been made by regulations for the purpose of preventing danger to public health from aircraft arriving at any place in England and Wales and for preventing the spread of infection by means of aircraft leaving any such place¹.

In the case of incoming aircraft arriving at a customs and excise airport², provision is made for the inspection of the aircraft by the medical officer at the airport³, for taking measures such as the examination, detention and disinfection of persons on board or leaving the aircraft⁴, for requiring the commander of the aircraft to answer questions, supply information, and notify deaths or cases of infectious disease on board the aircraft⁵, for authorising the detention of the aircraft for medical examination⁶, for requiring the aircraft to proceed to an airport able to apply sanitary measures⁷, for the deratting of aircraft⁸, and for taking other precautionary measures in connection with an aircraft known to have been in an infected area during its voyage or which is known or suspected to be carrying infected persons⁹. The regulations also provide for the procedure to be followed in the case of incoming aircraft alighting elsewhere than at a customs and excise airport¹⁰. The regulations are relaxed to a considerable extent in the case of any aircraft which has commenced its voyage within an 'excepted area' (comprising the United Kingdom, the Channel Islands, the Isle of Man, the Republic of Ireland, Belgium, metropolitan France, Greece, Italy, Luxembourg, the Netherlands and Spain), and which has not during the voyage alighted outside that area¹¹. In the case of outgoing aircraft, provision is made for the examination of persons proposing to embark and for prohibiting the embarkation of such persons¹², and for the taking of additional precautions in the case of infected places¹³.

The statutory provisions described above relating to the prevention of danger to public health and the spread of infection¹⁴ also have effect¹⁵ in relation to government aerodromes and aerodromes operated by the Civil Aviation Authority ('CAA')¹⁶. The CAA is under a duty to make similar arrangements in relation to aerodromes¹⁷ vested in or under the control of the Secretary of State¹⁸ or owned or managed by the CAA¹⁹.

1 See the Public Health (Control of Disease) Act 1984 s 13; the Public Health (Aircraft) Regulations 1979, SI 1979/1434 (amended by SI 2001/1149; SI 2007/1447; SI 2007/1603; and SI 2007/1900); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 885 et seq. The regulations are intended to implement the provisions of the International Health Regulations (see PARA 9). As to the authorities which are to enforce these provisions see the Public Health (Aircraft) Regulations 1979, SI 1979/1434, regs 4, 5; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 937-938.

2 As to the meaning of 'customs and excise airport' see PARA 310 note 2; definition applied by the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 2(1).

3 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 7; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 942.

4 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, regs 8-10; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 946.

5 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, regs 11-12; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 941. Where measures are required to be taken by the commander of an aircraft, the responsible authority may, at his request, itself carry out the measures, but may, if it thinks fit, recover the expenses from him: see regs 32, 33; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 935. Where the commander is unwilling to comply with any provision of the regulations he must notify the

medical officer, who may require the aircraft to leave the aerodrome immediately, in which circumstances the aircraft may not alight at any other place in England or Wales: see reg 36; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 934.

6 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, regs 14-18; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 942. Provision is also made for the release of aircraft that have been detained: see reg 19.

7 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 22; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 943.

8 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 13; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 945.

9 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 23, Sch 2; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 943, 946.

10 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 25; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 947.

11 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, regs 2(1), 26; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 933.

12 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 27; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 948.

13 See the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 28; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 949.

14 See the Public Health (Control of Disease) Act 1984 s 13 and the Public Health (Aircraft) Regulations 1979, SI 1979/1434: see the text and notes 1-13; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 885 et seq.

15 See subject to minor modifications.

16 See the Public Health (Control of Disease) Act 1984 ss 14, 76; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 885. As to the CAA see PARA 50 et seq. As to government aerodromes see PARA 178.

17 As to the meaning of 'aerodrome' see PARA 175.

18 As to the Secretary of State see PARA 33.

19 See the Civil Aviation Act 1982 s 36(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(9) DISEASES AND PESTS/319. Pests.

319. Pests.

The provisions of the Prevention of Damage by Pests Act 1949¹ may be applied by Order in Council in relation to aircraft as they apply to land, with such exceptions and modifications as may be specified in the Order². The Prevention of Damage by Pests Act 1949 deals with measures to keep down rats and mice³ and to prevent the infestation of food⁴. The use of particular premises or vehicles for the storage or transport of food may be prohibited⁵.

Regulations may be made as to the fumigation of premises and articles, including any aircraft, with a view to securing the health, safety and welfare of people at work⁶.

1 See **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 861 et seq.

2 Prevention of Damage by Pests Act 1949 s 23. At the date at which this volume states the law no such Order was in force.

3 See the Prevention of Damage by Pests Act 1949 Pt I (ss 1-12); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 864, 873 et seq. As to deratting and disinfection of aircraft see the Public Health (Aircraft) Regulations 1979, SI 1979/1434, reg 13; PARA 318; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 465.

4 See the Prevention of Damage by Pests Act 1949 Pt II (ss 13-18); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 869, 877 et seq.

5 See the Prevention of Damage by Pests Act 1949 s 14; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 880.

6 See the Health and Safety at Work etc Act 1974 ss 1(1)(a), 15, Sch 3; and **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARAS 302, 303, 424, 425. Accidents occasioning loss of human life or personal injury due to fumigation must be notified to the Health and Safety Executive. See further **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 856; **HEALTH AND SAFETY AT WORK** vol 53 (2009) PARAS 619-626. At the date at which this volume states the law no such regulations had been made.

UPDATE

319-321 Pests ... Exemption from requirement for sale of alcohol

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(10) SHOPS AND LICENSING HOURS/320. Sunday trading of shops.

(10) SHOPS AND LICENSING HOURS

320. Sunday trading of shops.

The Shops Act 1950, the Shops (Airports) Act 1962 and the Shops (Early Closing Days) Act 1965 subjected shops to detailed restrictions in relation to hours of closing, conditions of employment, the hours of employment of young persons and relatively strict rules on Sunday trading. These restrictions have now been abolished¹, except in the case of Sunday trading², and such restrictions as are now in force relate only to large shops³. The general prohibition on large shops opening on Sunday for the serving of retail customers is subject to statutory exemptions⁴. Shops at a designated airport⁵ which are situated in an applicable part of the airport⁶ and any shops which are not open for the retail sale of any goods other than food, stores or other necessities required by any person for an aircraft on its arrival at, or immediately before its departure from, an airport⁷ are exempt from the general prohibition⁸.

1 See the Employment Act 1989 ss 10, 29(4), Sch 3, Sch 7 (s 10 amended by the Education Act 1996 s 582(1), Sch 37 para 139; the Employment Act 1989 Sch 3 amended by the Statute Law (Repeals) Act 2004); the Deregulation and Contracting Out Act 1994 ss 23, 24, 81(1), Sch 17 (ss 23, 24 repealed by the Statute Law (Repeals) Act 2004); and the Sunday Trading Act 1994 ss 1(2), 9(2), Sch 5.

2 As to the law of Sunday trading generally see **TRADE AND INDUSTRY** vol 97 (2010) PARAS 908 et seq.

3 'Shop' means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods: Sunday Trading Act 1994 s 1(1), Sch 1 para 1. 'Large shop' means a shop which has a relevant floor area exceeding 280 square metres: Sch 1 para 1. 'Relevant floor area', in relation to a shop, means the internal floor area of so much of the shop as consists of or is comprised in a building, but excluding any part of the shop which, throughout the week ending with the Sunday in question, is used neither for the serving of customers in connection with the sale of goods nor for the display of goods: Sch 1 para 1. 'Sale of goods' does not include the sale of meals, refreshments or alcohol for consumption on the premises on which they are sold, or the sale of meals or refreshments prepared to order for immediate consumption off those premises: Sch 1 para 1 (definition amended by the Licensing Act 2003 s 198(1), Sch 6 para 110(1), (2)(b)).

4 See the Sunday Trading Act 1994 Sch 1 para 2 (amended by the Christmas Day (Trading) Act 2004 s 4(1), (2); and SI 2004/470); and **TRADE AND INDUSTRY** vol 97 (2010) PARA 908. As to exempt shops generally see **TRADE AND INDUSTRY** vol 97 (2010) PARA 910.

5 'Designated airport' means an airport designated by order made by the Secretary of State, as being an airport at which there appears to him to be a substantial amount of international passenger traffic: Sunday Trading Act 1994 Sch 1 para 3(4). As to the Secretary of State see PARA 33. The power to make such an order is exercisable by statutory instrument: Sch 1 para 3(5). Any order made under the Shops (Airports) Act 1962 s 1(2) (repealed) and in force on 26 August 1994 (ie the commencement date of the Sunday Trading Act 1994 Sch 1) has effect, so far as it relates to England and Wales, as if made also under the Sunday Trading Act 1994 Sch 1 para 3(4), and may be amended or revoked as it has effect for these purposes by an order under Sch 1 para 3(4): Sch 1 para 3(6). At the date at which this volume states the law no order had been made under Sch 1. However, by virtue of Sch 1 para 3(6), a number of orders have effect as if made under Sch 1 para 3(4): see eg the Airports (Shops) Order 1977, SI 1977/1397; the Airports Shops Order 1985, SI 1985/654; the Airports Shops (No 2) Order 1985, SI 1985/1739; and the London City Airport Shops Order 1987, SI 1987/1983.

6 See the Sunday Trading Act 1994 Sch 1 para 3(1)(e); and **TRADE AND INDUSTRY** vol 97 (2010) PARA 910. For these purposes, the applicable part is every part of a designated airport, except any part which is not ordinarily used by persons travelling by air to or from the airport: see Sch 1 para 3(3).

7 See the Sunday Trading Act 1994 Sch 1 para 3(1)(j); and **TRADE AND INDUSTRY** vol 97 (2010) PARA 910.

8 See the Sunday Trading Act 1994 Sch 1 paras 2(1), (2)(a), 3(1); and **TRADE AND INDUSTRY** vol 97 (2010) PARA 908 et seq.

UPDATE

319-321 Pests ... Exemption from requirement for sale of alcohol

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

320-321 Shops and Licensing Hours

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(10) SHOPS AND LICENSING HOURS/321. Exemption from requirement for sale of alcohol.

321. Exemption from requirement for sale of alcohol.

In the case of any international airport specified in an order of the Secretary of State¹, the sale by retail of alcohol within the airport's examination station² is not a licensable activity³.

¹ See the Airports Licensing (Liquor) Order 2005, SI 2005/1733, made under the Licensing Act 1964 s 87 (repealed); and note 3.

² As to the meaning of 'examination station' see PARA 310, definition applied by the Licensing Act 2003 s 173(6).

³ See the Licensing Act 2003 s 173(1)(d), (3), (6); and **LICENSING AND GAMBLING** vol 67 (2008) PARA 28. As to licensable activities see ss 1, 2; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 28 et seq. This exemption applies also to hoverports (s 173(1)(c): see PARA 361 note 2). Any airport or hoverport where the Licensing Act 1964 s 87 was in operation immediately before 24 November 2005 is, on and after that date, to be treated for the purposes of the Licensing Act 2003 s 173(1) as if it were designated: s 173(4); Licensing Act 2003 (Commencement No 7 and Transitional Provisions) Order 2005, SI 2005/3056, arts 1(2), 2(2). However, provision may by order be made for the Licensing Act 2003 s 173(4) to cease to have effect in relation to any port, airport or hoverport: s 173(5). As to an order still in force see the Dover Hoverport Licensing (Liquor) Order 1978, SI 1978/225.

UPDATE

319-321 Pests ... Exemption from requirement for sale of alcohol

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

320-321 Shops and Licensing Hours

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(i) Control of Aerodromes/322. Byelaws.

(11) POLICING AND PROTECTION OF AERODROMES

(i) Control of Aerodromes

322. Byelaws.

Where an airport is either designated for the purpose or is managed by the Secretary of State¹, the airport operator², whether he is the Secretary of State or some other person, may make byelaws for regulating the use and operation of the aerodrome and the conduct of all persons while within the airport³.

Before making byelaws, the Secretary of State must give public notice of the proposed byelaws to allow representations to be made and to be considered prior to the publication of the statutory instrument embodying them⁴. In the case of any other airport operator, the latter must ensure that his airport has been designated for the purpose⁵ and he must have the proposed byelaws confirmed by the Secretary of State for them to have any effect⁶.

The Secretary of State may revoke a byelaw made by another airport operator in respect of noise, vibration and pollution caused by aircraft on or above the airport⁷ where he has designated the airport for the purposes of noise regulation under the Civil Aviation Act 1982⁸ or where he is of the opinion that the byelaw is inconsistent with general safety or with any international obligation of the United Kingdom⁹.

Any person contravening these byelaws is liable on summary conviction to a fine specified in the byelaws¹⁰.

1 As to the Secretary of State see PARA 33. The Secretary of State's power is exercisable by statutory instrument: Airports Act 1986 s 63(7). Such instruments, being local in nature, are not listed in this work.

2 As to the meaning of 'airport operator' see PARA 183 note 4. As to the powers of the Civil Aviation Authority ('CAA') in respect of aerodromes see PARA 252. As to the CAA see PARA 50 et seq. As to airports managed by local authorities see PARA 183. The Local Government Act 1972 s 236(9) (notice of byelaws) and s 237 (penalties) (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 557, 571) do not apply to byelaws made by a local authority under the Airports Act 1986 s 63: see s 63(8) (amended by SI 1996/739).

3 See the Airports Act 1986 s 63(1)-(4). Where the airport has been designated for the purposes of the Aviation Security Act 1982 (see PARA 324), the manager may make byelaws to extend to the whole of the aerodrome and to require persons to leave the aerodrome or state their name and address and the purpose of their presence on the aerodrome if so requested by a relevant constable: s 28(1). As to the meaning of 'relevant constable' see PARA 324 note 9. As to the powers of the regular police on a designated airport see PARA 324. As to the meanings of 'manager' and 'aerodrome' see PARA 324 note 5.

4 See the Airports Act 1986 s 63(6), (7).

5 See the Airports Act 1986 s 63(1)(a). As to airports designated under s 63(1) see the Airports Byelaws (Designation) Order 1987, SI 1987/380; the Airports Byelaws (Designation) (No 2) Order 1987, SI 1987/2246; the Airport Byelaws (Designation) Order 1995, SI 1995/2474; the Airport Byelaws (Designation) Order 1996, SI 1996/2617; and the Airport Byelaws (Designation) Order 2005, SI 2005/354.

6 See the Airports Act 1986 s 63(5), Sch 3.

7 See the Airports Act 1986 s 63(2)(b).

8 As to airports designated under the Civil Aviation Act 1982 s 78 see PARA 260.

9 See the Airports Act 1986 s 64(3). Any order under s 64(3) may make such transitional, incidental or supplementary provision as appears to the Secretary of State to be necessary or expedient: s 79(5). As to the meaning of 'United Kingdom' see PARA 30 note 1.

10 Airports Act 1986 s 64(1). The fine must not exceed level 4 on the standard scale: s 64(2). As to the standard scale see PARA 50 note 8. As to the operation of byelaws prohibiting the unauthorised offer of services see *Robertson v Bannister* [1973] RTR 109, DC. As to byelaws relating to entry into the airport otherwise than as a bona fide airline passenger see *Cinnamond v British Airports Authority* [1980] 2 All ER 368, [1980] 1 WLR 582, CA. As to byelaws relating to public demonstrations interfering with the use of the airport see *British Airports Authority v Ashton* [1983] 3 All ER 6, [1983] 1 WLR 1079, DC.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(i) Control of Aerodromes/323. Special constables.

323. Special constables.

Persons nominated by the Secretary of State¹ may be appointed by any two justices of the peace to be special constables on any premises vested in the Secretary of State or under his control². Any person so appointed must be sworn in by the justices duly to execute the office of constable on those premises, and, when sworn, that person has on those premises the powers and privileges and is liable to the duties and responsibilities of a constable³. All special constables thus appointed are under the exclusive control of the Secretary of State, who has power to suspend or terminate their appointment⁴.

Where an aerodrome is neither a government aerodrome nor an airport designated for the purposes of the Aviation Security Act 1982, the aerodrome manager may maintain an aerodrome constabulary⁵.

1 As to the Secretary of State see PARA 33.

2 Civil Aviation Act 1982 s 57(1). As to special constables generally see **POLICE** vol 36(1) (2007 Reissue) PARA 108 et seq.

3 Civil Aviation Act 1982 s 57(2). As to the powers, privileges, duties and responsibilities of constables see **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.

4 Civil Aviation Act 1982 s 57(3). As to the control of ordinary constables see **POLICE** vol 36(1) (2007 Reissue) PARA 228 et seq.

5 See PARA 324.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(i) Control of Aerodromes/324. Policing of airports.

324. Policing of airports.

The Aviation Security Act 1982¹ enables the regular police² to take over the policing of designated civil airports from the aerodrome constabulary³. The Secretary of State⁴, after consulting the aerodrome manager⁵, police authorities and the chief officer of police for the area concerned⁶, may designate by order⁷ an aerodrome to be policed by the regular police in the interests of the preservation of the peace and the prevention of crime⁸. So long as the aerodrome has been so designated, any relevant constable⁹ is entitled to enter any part of the aerodrome irrespective of the manager¹⁰ and may act to the exclusion of any existing aerodrome constabulary¹¹.

The Secretary of State may make supplementary orders where an aerodrome becomes, or ceases to be, a designated airport, such as provisions relating to aerodrome byelaws¹², transfer of personnel and preservation of pension rights¹³.

The chief officer of police for the relevant police area must, in making arrangements for the policing of an aerodrome which is a designated airport, secure that the level of policing provided under the arrangements takes account of (1) any measures required to be taken pursuant to directions by the Secretary of State¹⁴; and (2) any other measures taken in relation to the aerodrome for security or policing purposes¹⁵ by immigration officers¹⁶ or officers of Revenue and Customs¹⁷ or by the manager of the aerodrome¹⁸. In relation to any time when a police services agreement is in force in relation to an aerodrome¹⁹, the manager of the aerodrome (a) must make to the police authority for the relevant police area such payments in respect of the policing provided for the aerodrome as fall to be made under the agreement; and (b) must secure that accommodation and facilities are provided in accordance with the agreement for use in connection with that policing²⁰. In relation to any time when no police services agreement is in force in relation to an aerodrome which is a designated airport, the manager of the aerodrome (i) must make to the police authority for the relevant police area such payments as are necessary to reimburse the authority in respect of the costs reasonably incurred by it in connection with the policing provided for the aerodrome²¹; and (ii) must secure that suitable accommodation and facilities are provided for use in connection with that policing²².

1 See the Aviation Security Act 1982 Pt III (ss 25-31).

2 As to the regular police see generally **POLICE**.

3 'Aerodrome constabulary' means, in relation to any aerodrome, any body of constables which the manager of the aerodrome has power to maintain at the aerodrome: Aviation Security Act 1982 s 31(1). As to the designation of airports see the text and note 7.

4 As to the Secretary of State see PARA 33.

5 'Manager', in relation to an aerodrome, means the person (whether the Civil Aviation Authority (see PARA 50 et seq), a local authority or any other person) by whom the aerodrome is managed: Aviation Security Act 1982 s 38(1) (definition amended by the Airports Act 1986 s 83(5), Sch 6 Pt I). 'Aerodrome' means the aggregate of the land, buildings and works comprised in an aerodrome within the meaning of the Civil Aviation Act 1982 (see PARA 175) and (if and so far as not comprised in an aerodrome as defined in that Act) any land, building or works situated within the boundaries of an area designated, by an order made by the Secretary of State which is for the time being in force, as constituting the area of an aerodrome for the purposes of the Aviation Security Act 1982: s 38(1).

6 See the Aviation Security Act 1982 s 25(2). The relevant police area in relation to any aerodrome is that area in which the aerodrome is wholly or mainly situated: see s 31(1). As to police authorities and areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq. As to the chief officers of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

7 The order must be made by statutory instrument and, where it contains a statement that it is made with the consent of the airport manager and the police authority, it may be annulled in pursuance of a resolution of either House of Parliament; if it does not contain such a statement it must be laid before Parliament in draft, which must be approved by resolution of each House of Parliament before the order can be made: Aviation Security Act 1982 s 25(3).

8 See the Aviation Security Act 1982 s 25(1). This provision re-enacts the Policing of Airports Act 1974 s 1(1) (repealed), under which were made all existing orders designating airports for the purpose of their policing: see the Policing of Airports (Heathrow) Order 1974, SI 1974/1671; the Policing of Airports (Stansted) Order 1975, SI 1975/168; the Policing of Airports (Gatwick) Order 1975, SI 1975/375; the Policing of Airports (Birmingham) Order 1976, SI 1976/590; and the Policing of Airports (Manchester) Order 1976, SI 1976/1045. A number of orders supplementing these orders have also been made.

9 'Relevant constable', in relation to an aerodrome, means any constable under the direction and control of the chief officer of police for the relevant police area: Aviation Security Act 1982 s 31(1). 'Constable' includes any person having the powers and privileges of a constable: s 38(1). A relevant constable may remove from any aerodrome which is a designated airport, or from any part of it (1) any person who, in contravention of any aerodrome byelaws, fails or refuses to leave the aerodrome or part after being requested by the constable to do so; (2) any vehicle, animal or thing brought to or left within the aerodrome or part in contravention of any aerodrome byelaws and any vehicle, animal or thing likely to cause danger or obstruction: s 28(2). As to powers of arrest without warrant generally see the Police and Criminal Evidence Act 1984 s 24; and **POLICE**.

10 See the Aviation Security Act 1982 s 26(1)(a). This provision is without prejudice to any right of entry existing apart from it: s 26(2).

11 Aviation Security Act 1982 s 26(1)(b).

12 The Secretary of State may amend aerodrome byelaws in order (1) to transfer to relevant constables any functions conferred by the byelaws until then on members of an aerodrome constabulary; (2) to extend the byelaws to the whole of the aerodrome if not done so by the airport manager under the Aviation Security Act 1982 s 28(1) or the Airports Act 1986 s 63 (see PARA 322); or (3) to include in any such byelaws any requirement for people to leave the aerodrome or make specified statements if required by a relevant constable (see the Aviation Security Act 1982 s 28(1)(b); and PARA 322): see s 30(2)(b).

13 See the Aviation Security Act 1982 s 30 (amended by the Airports Act 1986 s 83(5), Sch 6 Pt I; the Police and Magistrates' Courts Act 1994 s 93, Sch 9 Pt I; and the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 46, Sch 34 Pt VII). As to supplementary orders see note 8.

14 The directions given under the Aviation Security Act 1982 s 12, 13, 13A or 14 (see PARA 335 et seq). As to the Secretary of State see PARA 33.

15 For these purposes, 'policing purposes' has the same meaning as in the Aviation Security Act 1982 s 25A (see PARA 325): s 26(2E) (added by the Civil Aviation Act 2006 s 6, Sch 1 paras 1, 3(1), (2)).

16 'Immigration officer' means a person who is an immigration officer within the meaning of the Immigration Act 1971: Aviation Security Act 1982 s 31(1) (definition added by the Civil Aviation Act 2006 Sch 1 para 5). See **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 86.

17 As to officers of Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 901.

18 Aviation Security Act 1982 s 26(2A) (added by the Civil Aviation Act 2006 Sch 1 para 3(2)).

19 The under the Aviation Security Act 1982 s 25B (see PARA 325)). 'Police services agreement' has the meaning given by s 25B(3) (but this is subject to s 29D(7)): s 31(1) (definition added by the Civil Aviation Act 2006 Sch 1 para 5).

20 Aviation Security Act 1982 s 26(2B) (added by the Civil Aviation Act 2006 Sch 1 para 3(2)).

21 Head (i) in the text does not require the manager to pay any costs incurred by the police authority to the extent that those costs are defrayed by payments made by any other person to the police authority in respect of the policing provided for the aerodrome: s 26(2D) (added by the Civil Aviation Act 2006 Sch 1 para 3(2)).

22 Aviation Security Act 1982 s 26(2C) (added by the Civil Aviation Act 2006 Sch 1 para 3(2)).

UPDATE

324-325 Policing of airports, Police service agreements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(i) Control of Aerodromes/325. Police service agreements.

325. Police service agreements.

Where an aerodrome is a designated airport¹, at any time after the period of 12 months beginning with the operative date² there must be a police services agreement in force in relation to the aerodrome³. For these purposes, 'police services agreement' means an agreement between the relevant persons⁴ which specifies:

- 225 (1) the level of policing to be provided for the aerodrome⁵ during the period for which the agreement is in force;
- 226 (2) the payments to be made by the manager of the aerodrome in connection with that policing, or the manner in which such payments are to be assessed; and
- 227 (3) any accommodation and facilities to be provided by the manager in connection with that policing⁶.

Before a police services agreement is entered into, the manager of the aerodrome and the chief officer of police for the relevant police area, acting jointly, must carry out a consultation with those who also carry out protective activities at the aerodrome⁷ with a view to establishing:

- 228 (a) what measures are required to be taken in relation to the aerodrome for security or policing purposes⁸ in order to comply with or take account of:
- 5
 - 6. (i) any directions given by the Secretary of State⁹;
 - 7. (ii) any national threat assessment or relevant information¹⁰; and
 - 8. (iii) any guidance issued by the Secretary of State which relates to the policing of the aerodrome;
- 6
 - 229 (b) what other measures ought to be taken in relation to the aerodrome for policing purposes;
 - 230 (c) the extent to which measures within head (a) or (b) are being taken by the persons carrying out protective activities at the aerodrome¹¹ or the manager of the aerodrome; and
 - 231 (d) in the light of the above, the level of policing which should be provided for the aerodrome¹².

In determining the terms of a police services agreement, the relevant persons must have regard, in particular, to the matters established on the consultation carried out¹³ in contemplation of the agreement, and the extent, if any, to which the costs incurred by the police authority in connection with the policing provided for the aerodrome are, or are likely to be, defrayed by payments made in respect of that policing by any person other than the manager of the aerodrome¹⁴.

A police services agreement remains in force for a period of 12 months, or, if a longer period is specified in the agreement, for the period so specified¹⁵. It must contain provision for the agreement to be varied if there is a material change in circumstances relating to the policing provided for the aerodrome¹⁶. The agreement ceases to be in force if the aerodrome to which it relates ceases to be a designated airport¹⁷.

Any of the relevant persons may refer to the Secretary of State (A) a dispute between the manager of an aerodrome which is, or has been, a designated airport and the police authority, or the chief officer of police, for the relevant police area about the terms, construction or operation of a police services agreement which is, or has been, in force in relation to the aerodrome; (B) a failure by the relevant persons to enter into a police services agreement in a case where such an agreement is required to be in force¹⁸. Where such a matter has been referred to him, the Secretary of State must notify to each of the relevant persons the name of an independent expert¹⁹ who he proposes should deal with the matter²⁰. If, within the initial appointment period²¹, all the relevant persons agree to the appointment, the Secretary of State must appoint that independent expert to deal with the matter²². In default of agreement the manager of the aerodrome, and the police authority for the relevant police area and the chief officer of police for that area, acting jointly, must each appoint an independent expert within the period of 14 days beginning with the date following that on which the initial appointment period ends²³. The two independent experts so appointed must appoint a third independent expert to act as chairman²⁴, and the three independent experts so appointed must deal with the matter²⁵.

1 As to the designation of airports see PARA 324.

2 'Operative date', in the case of an aerodrome which was a designated airport on the date of the passing of the Civil Aviation Act 2006 (ie 8 November 2006) and has remained so designated since that date, means that date, and, in any other case, means the date as from which the aerodrome became a designated airport: Aviation Security Act 1982 s 25B(9) (ss 25A, 25B added by the Civil Aviation Act 2006 s 6, Sch 1 paras 1, 2).

3 Aviation Security Act 1982 s 25B(1), (2) (as added: see note 2).

4 For the purposes of the Aviation Security Act 1982 Pt III (ss 24B-31) 'relevant persons', in relation to an aerodrome, means (1) the manager of the aerodrome; (2) the police authority for the relevant police area; and (3) the chief officer of police for that area: Aviation Security Act 1982 s 25B(10) (as added: see note 2). As to the meaning of 'manager' in relation to an aerodrome see PARA 324 note 5. The relevant police area in relation to any aerodrome is that area in which the aerodrome is wholly or mainly situated: see s 31(1). As to police authorities and areas see **POLICE** vol 36(1) (2007 Reissue) PARA 136 et seq. As to the chief officers of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq.

5 Ie in accordance with the Aviation Security Act 1982 s 26(2A) (see PARA 324).

6 Aviation Security Act 1982 s 25B(3) (as added: see note 2).

7 Ie those persons specified in the Aviation Security Act 1982 s 25A(3). Those persons are (1) any person, other than the manager of the aerodrome, who is required to take any measures in relation to the aerodrome pursuant to a direction given under s 12, 13, 13A or 14 (see PARA 335 et seq); (2) the Commissioners for Her Majesty's Revenue and Customs (in relation to measures taken by officers of Revenue and Customs); and (3) the Secretary of State (in relation to measures taken by immigration officers): s 25A(3) (as added: see note 2). As to the meaning of 'immigration officer' see PARA 324 note 16. The Secretary of State may by order provide that s 25A(3) is to apply in relation to a particular aerodrome with any modifications specified in the order: s 25A(4) (as so added). The power to make an order under s 25A(4) is exercisable by statutory instrument and (a) any order containing a statement that it is made with the consent of the manager of the aerodrome and the chief officer of police for the relevant police area is subject to annulment in pursuance of a resolution of either House of Parliament; (b) any order not containing such a statement must be laid before Parliament in draft and must not be made unless the draft is approved by resolution of each House of Parliament: s 25A(5) (as so added). As to the Secretary of State see PARA 33.

8 'Policing purposes', in relation to an aerodrome, means the purposes of the preservation of the peace, or the prevention of crime, at the aerodrome: Aviation Security Act 1982 s 25A(6) (as added: see note 2).

9 Ie under the Aviation Security Act 1982 s 12, 13, 13A or 14.

10 'National threat assessment' means any assessment of a threat to the aviation industry issued by the Secretary of State; 'relevant information', in relation to an aerodrome, means any information (other than a national threat assessment) which is made available by (1) the manager of the aerodrome; (2) any person (other than the manager of the aerodrome) who is required to take any measures in relation to the aerodrome pursuant to s 12, 13, 13A or 14; (3) the chief officer of the police force for the relevant police area; (4) the Commissioners for Her Majesty's Revenue and Customs; or (5) the Secretary of State, and which relates to a

threat to security at the aerodrome or is relevant to the preservation of the peace, or the prevention of crime, at the aerodrome: Aviation Security Act 1982 s 25A(6) (as added: see note 2).

11 le the persons specified in the Aviation Security Act 1982 s 25A(3) (see note 7).

12 Aviation Security Act 1982 s 25A(1), (2) (as added: see note 2).

13 le under the Aviation Security Act 1982 s 25A.

14 Aviation Security Act 1982 s 25B(4) (as added: see note 2).

15 Aviation Security Act 1982 s 25B(5) (as added: see note 2). The manager of an aerodrome which is a designated airport must supply the Secretary of State with a copy of any police services agreement which is in force in relation to the aerodrome if the Secretary of State requests a copy: s 25B(8) (as so added).

16 Aviation Security Act 1982 s 25B(6) (as added: see note 2).

17 Aviation Security Act 1982 s 25B(7) (as added: see note 2).

18 Aviation Security Act 1982 s 29A(1), (2)(a), (3) (ss 29A-29D added by the Civil Aviation Act 2006 Sch 1 para 4).

19 For these purposes, 'independent expert', in relation to a matter referred to the Secretary of State under the Aviation Security Act 1982 s 29A, means a person (1) who is independent of the relevant persons and the Secretary of State; (2) who has no previous connection with the matter in question; and (3) who has relevant legal experience or knowledge or experience which is relevant to the matter in question: s 29B(9) (as added: see note 18).

20 Aviation Security Act 1982 s 29B(1), (2) (s 29B as added: see note 18).

21 For these purposes, 'initial appointment period' means the period of 14 days beginning with the date on which the Secretary of State notifies the relevant parties under the Aviation Security Act 1982 s 29B(2): s 29B(8) (as added: see note 18).

22 Aviation Security Act 1982 s 29B(3) (as added: see note 18).

23 Aviation Security Act 1982 s 29B(4) (as added: see note 18).

24 Aviation Security Act 1982 s 29B(5) (as added: see note 18). An appointment under s 29B(5) must be made within the period of 14 days beginning with the date on which the second of the two independent experts is appointed (or, if both independent experts are appointed on the same date, within the period of 14 days beginning with that date): s 29B(7) (as so added).

25 Aviation Security Act 1982 s 29B(6) (as added: see note 18). On the application of any of the relevant persons, the Secretary of State may (1) remove an independent expert on any of the grounds specified in s 29(2); (2) appoint an independent expert to replace one who has been removed under head (1) or who has died or resigned; (3) make any appointment which should have (but has not) been made under s 29B(4) or (5) (see the text and notes 23-24): s 29C(1) (as added: see note 18). The specified grounds are: (a) that circumstances exist that give rise to justifiable doubts as to the expert's impartiality; (b) that he does not possess the qualifications required by s 29B(9)(a)-(c) (see note 19); (c) that he is physically or mentally incapable of dealing with the matter in question or there are justifiable doubts as to his capacity to do so; (d) that he has refused or failed (i) properly to deal with the matter; or (ii) to use all reasonable dispatch in dealing with the matter, and that substantial injustice has been or will be caused to the applicant: s 29C(2) (as so added). The independent experts may not continue to deal with the matter while an application to the Secretary of State under head (1) is pending: s 29C(3) (as so added). The Secretary of State may not remove an independent expert under head (1) without first giving him the opportunity to make representations: s 29C(4) (as so added). As to the determination of matters referred under s 29A and the procedure to be followed see s 29D (as added: see note 18).

UPDATE

324-325 Policing of airports, Police service agreements

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(i) Control of Aerodromes/326. Providers of aviation security services.

326. Providers of aviation security services.

Regulations may provide for the Secretary of State¹ to maintain a list of persons who are approved by him for the provision of a particular aviation security service². The regulations may:

- 232 (1) prohibit the provision of an aviation security service by a person who is not listed in respect of that service³;
- 233 (2) prohibit the use or engagement for the provision of an aviation security service of a person who is not listed in respect of that service⁴;
- 234 (3) create a criminal offence⁵;
- 235 (4) make provision about application for inclusion in the list (including provision about fees)⁶;
- 236 (5) make provision about the duration and renewal of entries on the list (including provision about fees)⁷;
- 237 (6) make provision about training or qualifications which persons who apply to be listed or who are listed are required to undergo or possess⁸;
- 238 (7) make provision about removal from the list which must include provision for appeal⁹;
- 239 (8) make provision about the inspection of activities carried out by listed persons¹⁰;
- 240 (9) confer functions on the Secretary of State or on a specified person¹¹;
- 241 (10) confer jurisdiction on a court¹².

A direction in relation to security¹³ may include a requirement to use a listed person for the provision of an aviation security service¹⁴ and provide for all or part of the direction not to apply or to apply with modified effect where a listed person provides an aviation security service¹⁵.

1 As to the Secretary of State see PARA 33.

2 Aviation Security Act 1982 s 20A(2) (s 20A added by the Anti-terrorism, Crime and Security Act 2001 s 85). 'Aviation security service' means a process or activity carried out for the purpose of (1) complying with a requirement of a direction under any of the Aviation Security Act 1982 ss 12-14 (see PARAS 335-338); or (2) facilitating a person's compliance with a requirement of a direction under any of those provisions: s 20A(1) (as so added).

Regulations made under s 20A (a) may make different provision for different cases; (b) may include incidental, supplemental or transitional provision; (c) must be made by the Secretary of State by statutory instrument; (d) may not be made unless the Secretary of State has consulted organisations appearing to him to represent persons affected by the regulations; and (e) are subject to annulment in pursuance of a resolution of either House of Parliament: s 20A(6) (as so added).

At the date at which this volume states the law no regulations had been made under s 20A.

3 Aviation Security Act 1982 s 20A(3)(a) (as added: see note 2).

4 Aviation Security Act 1982 s 20A(3)(b) (as added: see note 2).

5 Aviation Security Act 1982 s 20A(3)(c) (as added: see note 2). Regulations under s 20A(3)(c) (1) may not provide for a penalty on summary conviction greater than a fine not exceeding the statutory maximum; (2) may not provide for a penalty of imprisonment on conviction on indictment greater than imprisonment for a term not exceeding two years (whether or not accompanied by a fine); and (3) may create a criminal offence of

purporting, with intent to deceive, to do something as a listed person or of doing something, with intent to deceive, which purports to be done by a listed person: s 20A(4) (as so added). As to the statutory maximum see PARA 43 note 12.

- 6 Aviation Security Act 1982 s 20A(3)(d) (as added: see note 2).
- 7 Aviation Security Act 1982 s 20A(3)(e) (as added: see note 2).
- 8 Aviation Security Act 1982 s 20A(3)(f) (as added: see note 2).
- 9 Aviation Security Act 1982 s 20A(3)(g) (as added: see note 2).
- 10 Aviation Security Act 1982 s 20A(3)(h) (as added: see note 2).
- 11 Aviation Security Act 1982 s 20A(3)(i) (as added: see note 2).
- 12 Aviation Security Act 1982 s 20A(3)(j) (as added: see note 2).
- 13 Ie a direction given under the Aviation Security Act 1982 ss 12-14: see PARAS 335-338.
- 14 Aviation Security Act 1982 s 20A(5)(a) (as added: see note 2).
- 15 Aviation Security Act 1982 s 20A(5)(b) (as added: see note 2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(i) Control of Aerodromes/327. Prevention of theft.

327. Prevention of theft.

A constable may search any person, vehicle or aircraft in an aerodrome¹, or anything which is in or on such a vehicle or aircraft, for stolen or prohibited articles², but only if he has reasonable grounds for suspecting that he will find stolen or prohibited articles³. The exercise of this power does not require a warrant⁴. For the purposes of exercising this power, a constable may (1) enter any part of an aerodrome; (2) detain a person, vehicle or aircraft; (3) board an aircraft⁵. If in the course of a search under these provisions a constable discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article⁶, he may seize it⁷. Nothing in these provisions authorises a constable to enter a dwelling⁸.

Any relevant constable⁹ may stop any person who is leaving a cargo area¹⁰ in an aerodrome which is a designated airport¹¹, and may inspect any goods carried by that person¹². He may also stop and search any vehicle or aircraft which is leaving the cargo area and inspect it and any goods carried in or on it¹³; and he may detain in the area any such goods for which there is not produced a document¹⁴ signed by a person authorised by the airport manager¹⁵ in that behalf authorising their removal from the area, and he may also detain any vehicle or aircraft which was carrying goods liable to such detention¹⁶.

1 As to the meaning of 'aerodrome' see PARA 324 note 5.

2 Aviation Security Act 1982 s 24B(1) (s 24B added by the Police and Justice Act 2006 s 12). The powers conferred by s 24B on a constable are without prejudice to any other powers exercisable by him apart from s 24B: s 24B(7) (as so added).

3 Aviation Security Act 1982 s 24B(2) (as added: see note 2).

4 Aviation Security Act 1982 s 24B(8) (as added: see note 2).

5 Aviation Security Act 1982 s 24B(3) (as added: see note 2).

6 An article is prohibited for these purposes if it is an article (1) made or adapted for use in the course of or in connection with criminal conduct; or (2) intended by the person having it with him for such use by him or by some other person: Aviation Security Act 1982 s 24B(5) (as added: see note 2). For these purposes, 'criminal conduct' means conduct which constitutes an offence in the part of the United Kingdom in which the aerodrome is situated, or would constitute an offence in that part of the United Kingdom if it occurred there: s 24B(6) (as so added). As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 Aviation Security Act 1982 s 24B(4) (as added: see note 2).

8 Aviation Security Act 1982 s 24B(9) (as added: see note 2).

9 As to the meaning of 'relevant constable' see PARA 324 note 9. The powers conferred on a relevant constable by the Aviation Security Act 1982 s 27 (see the text and notes 10-16) are without prejudice to any powers exercisable by him apart from s 27: s 27(9).

10 In the context of the prevention of theft, 'cargo area' means any area which appears to the Secretary of State to be used wholly or mainly for the storage or handling of cargo in an aerodrome and is designated by order made by the Secretary of State for the purpose of the prevention of theft: Aviation Security Act 1982 s 27(6). The order is made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 27(8). See eg the Heathrow Airport-London (Cargo Area Designation) Order 1970, SI 1970/958. As to the Secretary of State see PARA 33.

11 As to designated airports see PARA 324.

- 12 Aviation Security Act 1982 s 27(2)(a). Nothing in s 27(2) is to be construed as conferring a power to search any person: s 27(3).
- 13 Aviation Security Act 1982 s 27(2)(b). See note 12.
- 14 As to documents in respect of cargo see PARAS 502-503.
- 15 As to the meaning of 'manager' see PARA 324 note 5.
- 16 Aviation Security Act 1982 s 27(2)(c). See note 12.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(i) Control of Aerodromes/328. Control of road traffic.

328. Control of road traffic.

Road traffic enactments¹ apply to all roads within a designated airport² whether or not the public has access to them³. After consultation with the airport operator⁴ the Secretary of State may by order⁵ direct that those enactments be modified as necessary to confer:

- 242 (1) on the airport operator, functions usually exercised by a highway authority or a local authority⁶; or
- 243 (2) on the chief officer of the airport constabulary⁷, functions usually exercised by a chief officer of police⁸,

save that the chief officer of police keeps and exercises his functions where the airport has been designated under the Aviation Security Act 1982⁹.

Where an aerodrome has been designated under the Aviation Security Act 1982¹⁰, traffic wardens appointed by the police authority for the relevant police area¹¹ may exercise their functions on the aerodrome and enter it as against the manager of the aerodrome¹².

1 'Road traffic enactments' means the enactments, whether passed before or after the Airports Act 1986, relating to road traffic, including the lighting and parking of vehicles, and any order or other instrument having effect by virtue of such enactments: Airports Act 1986 ss 63(3), 65(6). As to road traffic generally see **ROAD TRAFFIC**.

2 'Designated airport' means an airport which is designated for the purposes of the Airports Act 1986 s 65 (control of road traffic) by an order made by the Secretary of State: s 65(6). As to the Secretary of State see **PARA 33**.

3 See the Airports Act 1986 s 65(1).

4 See the Airports Act 1986 s 65(4). This provision does not apply to government aerodromes: s 65(4). See further **PARA 178**. As to the meaning of 'airport operator' see **PARA 183** note 4.

5 The order may exempt particular roads or lengths of roads to which the public does not have access, requiring the airport operator to indicate the exempted roads or lengths of roads in a specified manner: see the Airports Act 1986 s 65(3).

6 See the Airports Act 1986 s 65(2)(a). As to local authorities see **PARA 47**.

7 'Airport constabulary' means, in relation to an airport owned or managed by the Secretary of State, the special constables appointed under the Civil Aviation Act 1982 s 57 (see **PARA 323**) and, in relation to any airport owned or managed by a local authority, any body of constables which that authority has power to maintain at that airport: Airports Act 1986 s 65(6).

8 See the Airports Act 1986 s 65(2)(b).

9 See the Aviation Security Act 1982 s 29(1) (amended by the Airports Act 1986 s 83(1), Sch 4 para 9). As to designated airports see **PARA 324**.

10 See under the Aviation Security Act 1982 s 25: see **PARA 324**.

11 As to the relevant police area see **PARA 324** note 6.

12 Aviation Security Act 1982 s 29(2)(a) (amended by the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 46, Sch 34 Pt VII).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(i) Control of Aerodromes/329. Custody and disposal of lost property and abandoned vehicles.

329. Custody and disposal of lost property and abandoned vehicles.

The Secretary of State¹ has made provision by regulations under the Civil Aviation Act 1949², for securing the safe custody and redelivery of any property which, while not in proper custody, is found on any premises belonging to him or under his control³. Since the passing of the Airports Act 1986, lost property is no longer the concern of the Secretary of State. It is for the airport operator to include in the airport byelaws⁴ the means to secure the safe custody and redelivery of lost property⁵. The byelaws may provide for requiring charges to be paid in respect of any such property before it is redelivered⁶, and for authorising the disposal of any such property if it is not redelivered before the expiration of any period specified in the regulations⁷.

After consulting the airport operator, the Secretary of State may make orders in respect of abandoned vehicles, adapting certain provisions of the Refuse Disposal (Amenity) Act 1978⁸ in their application to land and parking areas within a building in any designated airport⁹, and he may adapt the road traffic enactments in respect of abandoned vehicles¹⁰ not only as respects their application to roads within such aerodromes but also as respects their application to other land and parking areas within a building within those aerodromes¹¹.

The aerodrome must have been designated for the purpose¹².

1 As to the Secretary of State see PARA 33.

2 See the British Airports Authority (Lost Property) Regulations 1972, SI 1972/1027, made under the Civil Aviation Act 1949 s 56. Section 56 (as applied by the Airports Authority Act 1975 s 16) was repealed by the Civil Aviation Act 1982 s 109, Sch 16. By virtue of the Interpretation Act 1978 s 17(2)(b), the British Airports Authority (Lost Property) Regulations 1972, SI 1972/1027, continued to have effect under the Civil Aviation Act 1982 s 58 (as applied by the Airports Authority Act 1975 s 16 (amended by the Civil Aviation Act 1982 s 109(2), Sch 15 para 17(3))). The Airports Authority Act 1975 s 16 and the Civil Aviation Act 1982 s 58 were repealed by the Airports Act 1986 s 83(5), Sch 6. By virtue of the Airports Act 1986 s 83(4), Sch 5 para 11(2), the British Airports Authority (Lost Property) Regulations 1972, SI 1972/1027, now take effect as if they were contained in byelaws made under the Airports Act 1986 s 63(2)(j) (see the text and notes 4-7). A person finding lost property must hand it in to an employee or constable, who must deliver it to the lost property office unless a claimant first gives evidence of ownership and his name and address, which must be reported (British Airports Authority (Lost Property) Regulations 1972, SI 1972/1027, regs 4, 5). The lost property office must retain property in safe custody, although it must return official documents (eg licences and passports) to the issuing authority and, where the name and address of the owner of property are ascertainable (for which purpose property may be opened and examined: reg 9), he must be notified (reg 6). Property is handed to claimants without fee or reward on giving evidence of ownership and their names and addresses (reg 7). Property unclaimed for three months may be sold for the best obtainable price, although perishable or objectionable property may be sold or disposed of sooner (reg 8(1)-(3)). The owner is entitled to the proceeds of sale after costs are deducted (reg 8(4)). Records of property found and claimants' names and addresses must be kept (reg 6).

3 See the Civil Aviation Act 1949 s 56, replaced by the Civil Aviation Act 1982 s 58, which was repealed by the Airports Act 1986. See also note 2.

4 As to the meaning of 'airport operator' see PARA 183 note 4.

5 See the Airports Act 1986 s 63(2)(j). As to byelaws see PARA 322.

6 See the Airports Act 1986 s 63(2)(j)(i).

7 See the Airports Act 1986 s 63(2)(j)(ii).

8 le the Refuse Disposal (Amenity) Act 1978 ss 3-5 (powers and duties of local authorities to remove and dispose of vehicles abandoned on land in their area) and s 8 (powers of entry) so far as it relates to s 3, and any regulations made thereunder: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 743-746, 748.

9 See the Airports Act 1986 s 66(1), (3). 'Designated airport' means an airport designated for the purposes of s 66 by order made by the Secretary of State: s 66(5); and see note 12.

10 le the Road Traffic Regulation Act 1984 ss 99-102 (removal of vehicles from roads if illegally, obstructively or dangerously parked or broken down, and from roads or open land if abandoned) and any regulations made thereunder: see **ROAD TRAFFIC** (2007 Reissue) PARAS 870-874.

11 See the Airports Act 1986 s 66(2), (3).

12 See the Airports Act 1986 s 66(1), (5); and the Airports (Designation) (Removal and Disposal of Vehicles) Order 1990, SI 1990/54 (amended by SI 1993/2117; and SI 2000/707).

UPDATE

329 Custody and disposal of lost property and abandoned vehicles

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(i) Control of Aerodromes/330. Detention of aircraft.

330. Detention of aircraft.

An authorised person¹ may give a detention direction in respect of any aircraft² in the United Kingdom or registered or operating in the United Kingdom³ if he is of the opinion that⁴:

- 244 (1) a person has failed to comply or is likely to fail to comply with a requirement of a direction⁵ in respect of the aircraft⁶;
- 245 (2) a person has failed to comply with a requirement of an enforcement notice⁷ in respect of the aircraft⁸;
- 246 (3) a threat has been made to commit an act of violence⁹ against the aircraft or against any person or property on board the aircraft¹⁰; or
- 247 (4) an act of violence is likely to be committed against the aircraft or against any person or property on board the aircraft¹¹.

A detention direction in respect of an aircraft must be given in writing to the operator¹² of the aircraft, and must require him to take steps to ensure that the aircraft does not fly while the direction is in force¹³.

An authorised person who has given a detention direction in respect of an aircraft may do anything which he considers necessary or expedient for the purpose of ensuring that the aircraft does not fly while the direction is in force¹⁴.

The operator of an aircraft in respect of which a detention direction is given may object to the direction in writing to the Secretary of State¹⁵.

A detention direction in respect of an aircraft continues in force until the Secretary of State or an authorised person cancels it by notice in writing to the operator of the aircraft¹⁶.

A person commits an offence if without reasonable excuse he fails to comply with a requirement of a detention direction, or he intentionally obstructs a person acting to ensure that an aircraft does not fly in breach of a detention direction¹⁷.

1 As to the meaning of 'authorised person' see PARA 348 note 1.

2 A detention direction may be given in respect of a class of aircraft, and for that purpose: (1) a reference to 'the aircraft' in the Aviation Security Act 1982 s 20B(1) is to be treated as a reference to all or any of the aircraft within the class; and (2) the provisions of s 20B(2)-(9) (see the text and notes 3-17) apply as if the direction were given in respect of each aircraft within the class: s 20B(10) (s 20B added by the Anti-terrorism, Crime and Security Act 2001 s 86(1)).

3 See the Aviation Security Act 1982 s 20B(9) (as added: see note 2). As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

4 Aviation Security Act 1982 s 20B(1) (as added: see note 2).

5 Ie a direction under the Aviation Security Act 1982 s 12 (see PARA 335) or s 14 (see PARA 338).

6 Aviation Security Act 1982 s 20B(1)(a) (as added: see note 2).

7 As to enforcement notices see PARAS 348-350.

8 Aviation Security Act 1982 s 20B(1)(b) (as added: see note 2).

- 9 As to the meaning of 'act of violence' see PARA 331 note 2.
- 10 Aviation Security Act 1982 s 20B(1)(c) (as added: see note 2).
- 11 Aviation Security Act 1982 s 20B(1)(d) (as added: see note 2).
- 12 As to the meaning of 'operator' see PARA 437; definition applied by the Aviation Security Act 1982 s 38(1).
- 13 Aviation Security Act 1982 s 20B(2) (as added: see note 2).
- 14 Aviation Security Act 1982 s 20B(3) (as added: see note 2). In particular, the authorised person may (1) enter the aircraft; (2) arrange for another person to enter the aircraft; (3) arrange for a person or thing to be removed from the aircraft; (4) use reasonable force; (5) authorise the use of reasonable force by another person: s 20B(3)(a)-(e) (as added: see note 2).
- 15 Aviation Security Act 1982 s 20B(4) (as added: see note 2). As to the Secretary of State see PARA 33. On receipt of such an objection the Secretary of State must (1) consider the objection; (2) allow the person making the objection and the authorised person who gave the direction an opportunity to make written or oral representations to the Secretary of State or to a person appointed by him; (3) confirm, vary or cancel the direction; and (4) give notice of his decision in writing to the person who made the objection and to the authorised person who gave the direction: s 20B(5) (as added: see note 2).
- 16 Aviation Security Act 1982 s 20B(6) (as added: see note 2).
- 17 Aviation Security Act 1982 s 20B(7) (as added: see note 2). A person who is guilty of an offence under s 20B(7) is liable (1) on summary conviction, to a fine not exceeding the statutory maximum; or (2) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or to both: s 20B(8) (as so added). As to the statutory maximum see PARA 43 note 12.

UPDATE

330-338 Detention of aircraft ... Other directions given by the Secretary of State

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(ii) Powers of the Secretary of State/331. Protection against acts of violence.

(ii) Powers of the Secretary of State

331. Protection against acts of violence.

As well as providing for the protection of aircraft and of persons or property on board aircraft¹, the Aviation Security Act 1982 provides for the protection against acts of violence² of aerodromes³, of persons present at any time in any part of an aerodrome, of property present, permanently or not, at any time in any part of an aerodrome, and of air navigation installations which do not form part of an aerodrome⁴. Provision is made for the extension of these provisions⁵ to specified overseas territories⁶, and to Jersey⁷ and Guernsey⁸.

1 As to the protection of aircraft and of persons or property on board aircraft against acts of violence see PARA 623 et seq.

2 'Act of violence', for the purposes of the Aviation Security Act 1982 Pt II (ss 10-24A), means any act (whether actual or potential, and whether done or to be done in the United Kingdom or elsewhere) which, being an act done in Great Britain, constitutes, or if done in Great Britain would constitute, the offence of murder (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 89-91), attempted murder (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 79-83), manslaughter (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 91-102), culpable homicide or assault (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 84 et seq, 147 et seq), or an offence under the Offences against the Person Act 1861 ss 18, 20-24, 28, 29 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 118-126), under the Explosive Substances Act 1883 s 2 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 127) or under the Criminal Damage Act 1971 s 1 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 334): Aviation Security Act 1982 ss 10(2), 24A(1) (s 24A added by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 16). As to the meanings of 'United Kingdom' and 'Great Britain' see PARA 30 note 1.

3 As to the meaning of 'aerodrome' see PARA 324 note 5.

4 Aviation Security Act 1982 s 10(1). 'Air navigation installation' means any building, works, apparatus or equipment used wholly or mainly for the purpose of assisting air traffic control or as an aid to air navigation, together with any land contiguous or adjacent to any such building, works, apparatus or equipment and used wholly or mainly for purposes connected with it: s 38(1).

As to common rules for EU member states in the field of civil aviation security, see European Parliament and EC Council Regulation 2320/2002 (OJ L355, 30.12.2002 p 1) (amended by European Parliament and EC Council Regulation 849/2004 (OJ L158 30.4.2004 p1)) and EC Commission Regulation 622/2003 (OJ L89, 5.4.2003, p 9) (amended by EC Commission Regulations 68/2004 (OJ L10 16.1.2004 p 14), 781/2005 (OJ L131, 25.5.2005, p 24), 65/2006 (OJ L11 17.1.2006), 240/2006 (OJ L40 11.2.2006 p 3), 831/2006 (OJ L150 3.6.2006 p 4), 1448/2006 (OJ L271 30.9.2006 p 31), 1546/2006 (OJ L286 17.10.2006 p 6), 1862/2006 (OJ L358 16.12.2006 p 36), 1862/2006 (OJ L358 16.12.2006 p 36), 358/2008 (OJ L111 23.4.2008 p 5)). See also EC Commission Regulation 1217/2003 (OJ L169, 8.7.2003 p 44), EC Commission Regulation 1486/2003 (OJ L213, 23.8.2003, p 3) and EC Commission Regulation 1138/2004 (OJ L221, 22.6.2004, p 6).

5 Ie the Aviation Security Act 1982 Pt II (ss 10-24A): see PARA 332 et seq.

6 See the Aviation Security Act 1982 s 39(3) (amended by the Aviation and Maritime Security Act 1990 s 53(2), Sch 4); and the Aviation Security and Piracy (Overseas Territories) Order 2000, SI 2000/3059, art 3(1), Schs 2, 3. The territories to which the order applies are listed in art 2, Sch 1.

7 See the Aviation Security Act 1982 s 39(3); and the Aviation Security (Jersey) Order 1993, SI 1993/1251, art 2(1), Sch 1.

8 See the Aviation Security Act 1982 s 39(3); and the Aviation Security (Guernsey) Order 1997, SI 1997/2989, art 2(1), Sch 1.

UPDATE

330-338 Detention of aircraft ... Other directions given by the Secretary of State

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

331 Protection against acts of violence

NOTE 4--Regulation 622/2003 replaced: EC Commission Regulation 820/2008 (OJ L211, 19.8.2008, p 8) (amended by EC Commission Regulation 483/2009 (OJ L145, 10.6.2009, p 23)).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(ii) Powers of the Secretary of State/332. Power to require information.

332. Power to require information.

The Secretary of State¹ may by notice require any person who is the operator² of one or more aircraft registered or operating in the United Kingdom³, aerodrome managers⁴, the occupier of land forming part of an aerodrome, and any person having access to an aerodrome restricted zone⁵ for the purpose of his business⁶, as well as authorities responsible for United Kingdom air navigation installations⁷, to provide him with information concerning the measures which they are taking to protect aerodromes, aircraft, persons and property in them, and air navigation installations, against acts of violence⁸.

The notice may also require the person on whom it is served to give further information if at any time the information first given becomes inaccurate by any change of circumstances⁹.

Any person who without reasonable excuse fails to comply with any requirement imposed by such a notice, or in furnishing any information required knowingly or recklessly makes a statement which is false in a material particular is guilty of an offence¹⁰.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'operator' see PARA 437; definition applied by the Aviation Security Act 1982 s 38(1).

3 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

4 As to the meanings of 'aerodrome' and 'manager' see PARA 324 note 5.

5 As to restricted zones see PARA 333.

6 For the purposes of the Aviation Security Act 1982 Pt II (ss 10-24A), a person is permitted to have access to a restricted zone of an aerodrome or air navigation installation if he is permitted to enter that zone or if arrangements exist for permitting any of his employees or agents to enter that zone: s 24A(2) (added by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 16). See further PARA 333. As to the meaning of 'air navigation installation' see PARA 331 note 4.

7 For the purposes of the Aviation Security Act 1982, the authority responsible for an air navigation installation is either the Civil Aviation Authority (see PARA 50 et seq) where it has provided the installation or the installation is wholly or mainly used by it, or, in any other case, the person by whom the air navigation installation is provided or is wholly or mainly used: s 38(2) (amended by SI 2001/4050).

8 See the Aviation Security Act 1982 ss 11(1), 21 (s 11(1) substituted by the Aviation and Maritime Security Act 1990 Sch 1 para 2). The notice must specify a date, not earlier than seven days from the date on which the notice is served, before which the information required must be furnished: Aviation Security Act 1982 s 11(2) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 2). The notice may at any time be revoked or varied by a further notice: Aviation Security Act 1982 s 11(6) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 2).

9 See the Aviation Security Act 1982 s 11(3) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 2). The information must be furnished by a date specified in the notice, not being earlier than seven days from the date on which the change of circumstances occurs: Aviation Security Act 1982 s 11(4) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 2).

10 Aviation Security Act 1982 s 11(5) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or to both: Aviation Security Act 1982 s 11(5). As to the statutory maximum see PARA 43 note 12.

UPDATE

330-338 Detention of aircraft ... Other directions given by the Secretary of State

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(ii) Powers of the Secretary of State/333. Designation of restricted zones.

333. Designation of restricted zones.

The manager of an aerodrome¹ may of his own accord, or when requested by the Secretary of State² must³, apply to the Secretary of State for the designation of the whole or part of the aerodrome as a restricted zone⁴ for the purposes of aviation security⁵. The aerodrome manager must consult the authority responsible for any air navigation installation to be found on the aerodrome before making the application⁶. The Secretary of State may approve the application, with or without modification⁷, and designate the restricted zone accordingly⁸. The designation may be permanent or for specified days or times of day, and for the whole of the aerodrome or parts of it⁹. The Secretary of State must give notice of any designation to the manager of the aerodrome and the authority responsible for any air navigation installation which forms part of the aerodrome, and the designation of the restricted zone takes effect on the giving of the notice¹⁰.

In relation to an air navigation installation in the United Kingdom¹¹ which does not form part of an aerodrome, the provisions described above apply as if reference to an aerodrome were reference to an air navigation installation¹².

Unauthorised presence in a restricted zone, whether of an aerodrome or of an air navigation installation outside an aerodrome, renders the person present in the restricted zone without lawful authority or reasonable excuse guilty of an offence¹³. Notices stating that the area concerned is a restricted zone must be posted so as to be readily seen and read by persons entering the restricted zone¹⁴.

1 As to the meanings of 'manager' and 'aerodrome' see PARA 324 note 5.

2 As to the Secretary of State see PARA 33.

3 The Secretary of State may make the designation without an application by the aerodrome manager where the latter fails to apply within the specified period when required to do so: Aviation Security Act 1982 s 11A(6) (s 11A added by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 3).

4 'Restricted zone', in relation to an aerodrome or air navigation installation, means any part of the aerodrome or installation designated under the Aviation Security Act 1982 s 11A or, where the whole of the aerodrome or installation is so designated, that aerodrome or installation: s 24A(1) (added by the Aviation and Maritime Security Act 1990 Sch 1 para 16). As to the meaning of 'air navigation installation' see PARA 331 note 4.

5 Aviation Security Act 1982 s 11A(1) (as added: see note 3). The application must be made in the form and manner required by the Secretary of State: s 11A(3) (as so added).

6 Aviation Security Act 1982 s 11A(2)(a) (as added: see note 3). The manager must send a copy of the application to the authority responsible for the installation: s 11A(2)(b) (as so added).

7 If the Secretary of State wishes to modify the application, he must consult the aerodrome manager and the authority responsible for the air navigation installation part of the aerodrome before making the designation: Aviation Security Act 1982 s 11A(5) (as added: see note 3).

8 Aviation Security Act 1982 s 11A(4) (as added: see note 3). The designation may be revoked or varied at any time, the provisions of s 11A(1)-(9) applying to such revocation or variation: s 11A(10) (as so added).

9 Aviation Security Act 1982 s 11A(7) (as added: see note 3).

10 Aviation Security Act 1982 s 11A(8) (as added: see note 3).

11 As to the meaning of 'United Kingdom' see PARA 30 note 1.

12 Aviation Security Act 1982 s 11A(9) (as added: see note 3).

13 Aviation Security Act 1982 s 21C(1) (s 21C(1)-(3) added by the Aviation and Maritime Security Act 1990 s 5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Aviation Security Act 1982 s 21C(3) (as so added). As to the standard scale see PARA 50 note 8. A person who remains on any part of a restricted zone after being requested to leave may be removed by a constable or by the manager of the aerodrome or a person acting on his behalf: s 21C(4) (added by the Anti-terrorism, Crime and Security Act 2001 s 127(3)(a)). As to the meaning of 'constable' see PARA 324 note 9.

14 See the Aviation Security Act 1982 s 21C(2) (as added: see note 13). The unauthorised entry into a restricted zone may not be penalised if it cannot be proved that, at the material time, the notices were posted as prescribed: s 21C(2) (as so added).

UPDATE

330-338 Detention of aircraft ... Other directions given by the Secretary of State

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(ii) Powers of the Secretary of State/334. Restriction of access to foreign aircraft.

334. Restriction of access to foreign aircraft.

The Secretary of State¹ is empowered by statute to prevent the removal from the United Kingdom² of aircraft belonging to any state which, by prohibiting³ any one or more aircraft registered in the United Kingdom from flying over or landing in its territory, appears to contravene an international agreement relating to civil aviation to which that state and the United Kingdom are parties⁴. In such circumstances, the Secretary of State may give a direction requiring that measures be taken to prevent any person, save a constable, from gaining access to any aircraft⁵ situated in the United Kingdom⁶ which is registered in, owned by, or operated under the direction of nationals of, that state⁷.

Where the Secretary of State has given such a direction, a constable or other specified person⁸ may enter any part of the aerodrome or land on which the aircraft is situated⁹, and go into or onto the aircraft (if need be by force), for the purpose of ascertaining whether the direction is being complied with¹⁰. He may also require the commander¹¹ of the aircraft, or, in his absence, any other person reasonably believed to be in possession of documents relating to the aircraft, to produce such documents¹², and may remove and detain the documents¹³.

If the aircraft is situated in an aerodrome, the direction may require the aircraft to be moved in order to prevent any interference with the functioning of the aerodrome, and a constable or other specified person may move it or cause it to be moved to such other part of the aerodrome as is specified in the direction¹⁴. If the aircraft is situated elsewhere, the direction may require it to be moved for the purpose of facilitating its preparation for a flight out of the United Kingdom, and a constable or other specified person may move it or cause it to be moved to any aerodrome specified in the direction¹⁵. In either case, the constable or specified person may enter any part of the aerodrome or land on which the aircraft is situated¹⁶, and go into or onto the aircraft, if need be by force¹⁷.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 Steps taken by a state to prevent certain aircraft from flying over, or landing in, its territory are taken to prohibit aircraft from doing so (Aviation and Maritime Security Act 1990 s 48(3)), although these provisions do not apply where the prohibition only affects Crown aircraft (s 48(2)).

4 See the Aviation and Maritime Security Act 1990 s 48; and the text and notes 5-17.

5 A person gains access to an aircraft if, and only if, he goes into or onto the aircraft, carries out any work on the aircraft or delivers anything to the aircraft or to persons on board the aircraft: Aviation and Maritime Security Act 1990 s 48(13).

6 A direction may be made in respect of an aircraft which (1) has landed in the United Kingdom and is situated at an aerodrome (Aviation and Maritime Security Act 1990 s 48(4)(a)); (2) has landed on any land in the United Kingdom outside an aerodrome, with the consent of the occupier of that land, and is situated on that land (s 48(4)(b)); or (3) has landed in the United Kingdom and is situated on land outside an aerodrome to which it has been moved with the consent of the occupier of that land (s 48(4)(c)). A direction relating to an aircraft situated in an aerodrome must be given to the manager of the aerodrome, and a direction relating to an aircraft situated elsewhere must be given to the occupier of the land on which the aircraft is situated: s 48(5). No direction may be given in respect of an aircraft which has landed in the United Kingdom in accordance with permission granted by the Secretary of State under any enactment: s 48(4). As to the meanings of 'aerodrome' and 'manager' see PARA 324 note 5 (definitions applied by s 48(13)).

7 Aviation and Maritime Security Act 1990 s 48(1), (5). The person to whom the direction is given may himself be prohibited from gaining access to the aircraft save in specified circumstances (s 48(6)), but a direction cannot prevent a person who needs to gain access to an aircraft for the purpose of preparing the aircraft for a flight out of the United Kingdom (either directly or following an intermediate stop elsewhere in the United Kingdom for non-traffic purposes), or any other person acting with the permission of a constable, from gaining such access (s 48(5)(a), (b)(i)). A person commits an offence if, without reasonable excuse, he fails to comply with a direction given to him under s 48(5) (s 48(11)(a)) or, knowing that such a direction has effect in relation to an aircraft, he gains access to the aircraft without lawful authority or reasonable excuse and otherwise than in accordance with the direction (s 48(11)(c)). A person guilty of such an offence is liable (1) on summary conviction, to a fine not exceeding the statutory maximum; or (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both: s 48(12). As to the statutory maximum see PARA 43 note 12.

A direction under s 48(5) has effect notwithstanding anything contained in any contract (whether a United Kingdom contract or not) or contained in, or having effect by virtue of, any other enactment or rule of law, and accordingly no proceedings (whether civil or criminal) lie against any person in any United Kingdom court by reason of anything done or not done by him or on his behalf in compliance with such a direction: s 48(8). As to the meaning of 'United Kingdom contract' see PARA 346 note 3; and as to the meaning of 'United Kingdom court' see PARA 346 note 4 (definitions applied by s 48(13)). The giving of a direction under s 48(5) does not, however, affect any liability to pay airport charges incurred in respect of the aircraft to which the direction relates, or the exercise of any power arising under the Civil Aviation Act 1982 s 88 (detention and sale of aircraft for unpaid airport charges: see PARAS 257-258): Aviation and Maritime Security Act 1990 s 48(9). As to airport charges and the power to detain and sell an aircraft for unpaid charges see PARA 588 et seq.

8 If a person specified in the direction for these purposes: Aviation and Maritime Security Act 1990 s 48(7). A specified person cannot be prevented by a direction under s 48(5) from gaining access to the aircraft: s 48(5)(c).

9 The power of entry conferred by the Aviation and Maritime Security Act 1990 s 48(7)(a) extends to any building or works in or on the relevant aerodrome or land: s 48(7)(a)(i).

10 Aviation and Maritime Security Act 1990 s 48(7)(a). A person acting in pursuance of powers conferred under s 48(7) cannot be prevented by a direction under s 48(5) from gaining access to the aircraft (s 48(5)(b)(ii)), and a person commits an offence if he intentionally obstructs a person acting in the exercise of such a power (s 48(11)(b)). A person guilty of such an offence is liable (1) on summary conviction, to a fine not exceeding the statutory maximum; or (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both: s 48(12).

11 As to the meaning of 'commander' see PARA 642 note 2; definition applied by the Aviation and Maritime Security Act 1990 s 48(13).

12 Aviation and Maritime Security Act 1990 s 48(7)(c). See note 10.

13 Aviation and Maritime Security Act 1990 s 48(7)(d). See note 10. Any documents removed and detained in pursuance of s 48(7)(d) must be returned to the commander of the aircraft when the relevant constable or specified person is satisfied that the aircraft is being prepared for a flight out of the United Kingdom (either directly or following an intermediate stop elsewhere in the United Kingdom for non-traffic purposes): s 48(10). 'Stop for non-traffic purposes' means a landing for any purpose other than the taking on board or discharging of passengers carried for reward or of cargo so carried: s 48(13). As to the meaning of 'reward' see PARA 106 note 3; definition applied by s 48(13).

14 Aviation and Maritime Security Act 1990 s 48(7)(b)(i). See note 10.

15 Aviation and Maritime Security Act 1990 s 48(7)(b)(ii). See note 10.

16 See note 9.

17 Aviation and Maritime Security Act 1990 s 48(7)(a). See note 10.

UPDATE

330-338 Detention of aircraft ... Other directions given by the Secretary of State

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(ii) Powers of the Secretary of State/335. Power to impose restrictions in relation to aircraft.

335. Power to impose restrictions in relation to aircraft.

The Secretary of State¹ may direct the operator² of one or more aircraft registered or operating in the United Kingdom³, or the manager of an aerodrome⁴ in the United Kingdom, not to permit persons or property on board the relevant aircraft or to come into proximity to the aircraft unless searches of those persons or that property have been carried out by constables⁵ or other specified persons⁶. He may also direct the aircraft operator or the aerodrome manager not to allow the aircraft to fly unless it has been so searched⁷.

The Secretary of State may further direct such an operator or manager not to let the aircraft fly unless specified modifications or alterations of the aircraft or apparatus or equipment installed in the aircraft have been carried out or specified additional apparatus or equipment is installed⁸.

Any direction not to cause or permit anything to be done, given under these provisions, is to be construed as requiring the person to whom it is given to take all practicable and necessary steps in the circumstances to prevent that thing from being done⁹.

Any person who without reasonable excuse fails to comply with such a direction is guilty of an offence¹⁰ and is guilty of a further offence if, when he has been convicted of such an offence, the failure continues without reasonable excuse after the conviction¹¹.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'operator' see PARA 437; definition applied by the Aviation Security Act 1982 s 38(1). The direction given to the aircraft operator must specify whether it relates to all aircraft of which he is the operator or will become the operator, or to a class of such aircraft or to one or more such aircraft, whether it relates to all persons or only to one or more persons or to persons of one or more descriptions, and whether it relates to property of every description or to particular property or property of one or more descriptions: see s 12(5). A direction may be given to a person appearing to the Secretary of State to be about to become such an operator, although it may not take effect until he actually becomes such an operator: see s 12(8).

3 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

4 As to the meanings of 'manager' and 'aerodrome' see PARA 324 note 5. The direction given to the aerodrome manager must specify whether it relates to all aircraft in any part of the aerodrome at the time when the direction is given or at any subsequent time or to a class of such aircraft, whether it relates to all persons or only to one or more persons or persons of one or more descriptions, and whether it relates to property of every description or to particular property, or property of one or more descriptions: Aviation Security Act 1982 s 12(6). A direction may be given to a person appearing to the Secretary of State to be about to become such a manager although it may not take effect until he actually becomes such a manager: see s 12(8).

5 As to the meaning of 'constable' see PARA 324 note 9.

6 Aviation Security Act 1982 s 12(1)(a).

7 Aviation Security Act 1982 s 12(1)(b).

8 Aviation Security Act 1982 s 12(2). Before giving such a direction, the Secretary of State must inform the Civil Aviation Authority ('CAA') (see PARA 50 et seq) of the proposed requirements and take account of any advice which the CAA may give him in respect of those proposals: s 12(3). The Secretary of State must allow a specified period for the modifications, alterations or installation of additional apparatus or equipment to be carried out; and the direction does not take effect before the end of that period: s 12(4). As to limitations on the scope of the direction see PARA 344.

9 Aviation Security Act 1982 s 12(7).

10 Aviation Security Act 1982 s 12(9) (amended by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: Aviation Security Act 1982 s 12(9). As to the statutory maximum see PARA 43 note 12.

11 Aviation Security Act 1982 s 12(10) (added by the Aviation and Maritime Security Act 1990 Sch 1 para 4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues: Aviation Security Act 1982 s 12(10) (as so added). As to the standard scale see PARA 50 note 8.

UPDATE

330-338 Detention of aircraft ... Other directions given by the Secretary of State

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(ii) Powers of the Secretary of State/336. Power to require aerodrome managers to promote searches.

336. Power to require aerodrome managers to promote searches.

The Secretary of State¹ may direct the manager of an aerodrome² in the United Kingdom³ to use his best endeavours to secure that searches of the aerodrome and aircraft, persons or property in any part of the aerodrome are carried out by constables⁴ or other specified persons⁵. Where such a direction is in force, any constable or specified person who has reasonable cause to suspect that certain dangerous articles statutorily banned⁶ are or may be brought into any part of the aerodrome may, without a warrant, search any part of the aerodrome or any aircraft, vehicle, goods, property or person for the time being in any part of the aerodrome⁷. For that purpose, he may enter any building or works and enter upon any land in the aerodrome even by force and he may stop any such aircraft, vehicle, goods, property or person and detain it or him as need be⁸.

Any person who without reasonable excuse fails to comply with such a direction or who intentionally obstructs a person acting in the exercise of a power conferred on him under these provisions is guilty of an offence⁹. Where a person is convicted of failing to comply, he is guilty of a further offence if the failure continues without reasonable excuse after the conviction¹⁰.

1 As to the Secretary of State see PARA 33.

2 As to the meanings of 'manager' and 'aerodrome' see PARA 324 note 5.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 As to the meaning of 'constable' see PARA 324 note 9.

5 Aviation Security Act 1982 s 13(1), (2).

6 The articles to which the Aviation Security Act 1982 s 4 applies: see PARA 630.

7 Aviation Security Act 1982 s 13(3). This is expressed to be subject to s 7(1). Section 13(3) has effect without prejudice to the operation, in relation to any offence under the Aviation Security Act 1982, of the Police and Criminal Evidence Act 1984 ss 17, 24, s 24A (which confer power to arrest without warrant and to enter premises for the purpose of making an arrest) or of the Criminal Law Act 1967 s 3 (use of force in making arrest etc: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 926): Aviation Security Act 1982 s 13(5)(a) (amended by the Serious Organised Crime and Police Act 2005 s 111, Sch 7 para 57).

8 Aviation Security Act 1982 s 13(3)(a), (b).

9 Aviation Security Act 1982 s 13(4)(a), (b) (amended by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: Aviation Security Act 1982 s 13(4)(i), (ii). As to the statutory maximum see PARA 43 note 12.

10 Aviation Security Act 1982 s 13(4A) (added by the Aviation and Maritime Security Act 1990 Sch 1 para 5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues: Aviation Security Act 1982 s 13(4A) (as so added). As to the standard scale see PARA 50 note 8.

UPDATE

330-338 Detention of aircraft ... Other directions given by the Secretary of State

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(ii) Powers of the Secretary of State/337. Power to require other persons to promote searches.

337. Power to require other persons to promote searches.

A person who occupies any land forming part of an aerodrome¹ in the United Kingdom² or who is permitted to have access to a restricted zone³ of such an aerodrome for the purposes of his business activities may be directed by the Secretary of State⁴ to use his best endeavours to secure that such searches as are specified in the direction are carried out by constables⁵ or other specified persons⁶.

A direction given to the occupier of the land may specify searches of the land which he occupies within the aerodrome, and persons or property which may at any time be on that land⁷. A direction given to a person permitted access to a restricted zone may specify searches of any land which he occupies outside the aerodrome for the purposes of his business, and persons or property which may at any time be on that land⁸.

Any person who without reasonable excuse fails to comply with such a direction is guilty of an offence⁹. Where he has been convicted of failing to comply, he is guilty of a further offence if the failure continues without reasonable excuse after the conviction¹⁰.

1 As to the meaning of 'aerodrome' see PARA 324 note 5.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 As to the meaning of 'restricted zone' see PARA 333 note 4. As to when a person is permitted to have access to a restricted zone see PARA 332 note 6.

4 As to the Secretary of State see PARA 33.

5 As to the meaning of 'constable' see PARA 324 note 9.

6 Aviation Security Act 1982 s 13A(1) (s 13A added by the Aviation and Maritime Security Act 1990 s 2).

7 Aviation Security Act 1982 s 13A(2)(a) (as added: see note 6).

8 Aviation Security Act 1982 s 13A(2)(b) (as added: see note 6).

9 Aviation Security Act 1982 s 13A(3) (as added: see note 6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: s 13A(3) (as so added). As to the statutory maximum see PARA 43 note 12.

10 Aviation Security Act 1982 s 13A(4) (as added: see note 6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues: s 13A(4) (as so added). As to the standard scale see PARA 50 note 8.

UPDATE

330-338 Detention of aircraft ... Other directions given by the Secretary of State

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(ii) Powers of the Secretary of State/338. Other directions given by the Secretary of State.

338. Other directions given by the Secretary of State.

The Secretary of State¹ may direct an aircraft operator², an aerodrome manager³, the occupier of any land forming part of an aerodrome, or a person authorised to have access to a restricted zone⁴ for the purpose of his business activities, to take specified measures, in respect of aircraft, aerodromes, specified land or specified activities carried on by the relevant person in the restricted zone, as the case may be⁵. Such measures may include the provision of personnel to guard aircraft, the aerodrome, persons or property in any part of the aerodrome, or that part under the control of the person so directed, against acts of violence⁶; and in respect of a person having access to a restricted zone, to guard any land outside the aerodrome which he occupies for business purposes, and any vehicles, equipment and goods connected with those purposes and any aircraft under his control⁷.

Such a direction may be either of a general or of a specific character⁸; and may be given to a person appearing to the Secretary of State to be about to become one of those to whom such a direction may be given⁹. A direction must not require any search or modification or alteration of aircraft or installation of equipment or apparatus on aircraft¹⁰; and may not be construed as requiring any person directed to construct, execute, alter, demolish or remove any building or works on land outside the aerodrome to do anything which would be actionable at the suit of persons having rights on that land¹¹.

Any person who, without reasonable excuse, fails to comply with such a direction or intentionally interferes with any building constructed or works executed on any land or with anything installed on, under, over or across any land, in compliance with such a direction, is guilty of an offence¹². Where a person is convicted of failing to comply with such a direction, he is guilty of a further offence if the failure continues without reasonable excuse after the conviction¹³.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'operator' see PARA 437; definition applied by the Aviation Security Act 1982 s 38(1). The direction may concern all aircraft registered or operating in the United Kingdom of which he is the operator at the time when the direction is given or any subsequent time, or such aircraft or class of aircraft as specified by the direction: s 14(1A)(a) (added by the Aviation and Maritime Security Act 1990 s 3(1)). As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to the meanings of 'aerodrome' and 'manager' see PARA 324 note 5.

4 As to the meaning of 'restricted zone' see PARA 333 note 4. As to when a person is permitted to have access to a restricted zone see PARA 332 note 6.

5 See the Aviation Security Act 1982 s 14(1), (1A) (s 14(1) substituted, and s 14(1A) added, by the Aviation and Maritime Security Act 1990 s 3(1)). As to limitations on the scope of such a direction see PARA 344.

6 As to the meaning of 'act of violence' see PARA 331 note 2.

7 See the Aviation Security Act 1982 s 14(2) (substituted by the Aviation and Maritime Security Act 1990 s 3(1)).

8 Aviation Security Act 1982 s 14(3). A direction may require any measures specified in the direction to be taken at such time or within such period as may be so specified: s 14(3).

9 Aviation Security Act 1982 s 14(6) (amended by the Aviation and Maritime Security Act 1990 s 3(3)). The direction takes effect only when the person concerned becomes a person to whom the Aviation Security Act 1982 s 14 applies: s 14(6) (as so amended).

10 Aviation Security Act 1982 s 14(5). As to searches see PARAS 336-337. As to modifications or alterations to aircraft, or equipment or apparatus on aircraft see PARA 335.

11 See the Aviation Security Act 1982 s 16(6) (substituted by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 8). The ownership of any property is not affected by reason only that it is placed on or under, or affixed to, any land in compliance with a direction under the Aviation Security Act 1982 s 14: s 14(8).

12 Aviation Security Act 1982 s 14(7)(a), (b) (amended by the Aviation and Maritime Security Act 1990 s 53(2), Sch 1 para 6, Sch 4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both: Aviation Security Act 1982 s 14(7)(i), (ii). As to the statutory maximum see PARA 43 note 12.

13 Aviation Security Act 1982 s 14(7A) (added by the Aviation and Maritime Security Act 1990 Sch 1 para 6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues: Aviation Security Act 1982 s 14(7A) (as so added). As to the standard scale see PARA 50 note 8.

UPDATE

330-338 Detention of aircraft ... Other directions given by the Secretary of State

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(ii) Powers of the Secretary of State/339. Power to make regulations requiring the reporting of occurrences.

339. Power to make regulations requiring the reporting of occurrences.

For the purpose of protecting aircraft, aerodromes¹ and air navigation installations² against acts of violence³, the Secretary of State⁴ may make regulations⁵ requiring specified persons to report to him any occurrence of a specified description, including occurrences taking place outside the United Kingdom⁶ which concern aircraft registered in the United Kingdom⁷. The regulations may also make provision in relation to offences and penalties⁸.

1 As to the meaning of 'aerodrome' see PARA 324 note 5.

2 As to the meaning of 'air navigation installation' see PARA 331 note 4.

3 As to the meaning of 'act of violence' see PARA 331 note 2.

4 As to the Secretary of State see PARA 33.

5 At the date at which this volume states the law no such regulations had been made.

6 As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 Aviation Security Act 1982 s 21G(1), (4) (s 21G added by the Aviation and Maritime Security Act 1990 s 7). As to the registration of aircraft see PARA 367 et seq. Before making the regulations, the Secretary of State must consult any organisation representing persons who may be affected by such regulations: Aviation Security Act 1982 s 21G(2) (as so added). The regulations must specify the manner in which, and the period within which, a report must be made: s 21G(1) (as so added). Any statutory instrument containing regulations under s 21G (as so added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 21G(5) (as so added).

8 Aviation Security Act 1982 s 21G(3) (as added: see note 7). The maximum penalties which can be prescribed by regulations are (1) in the case of knowingly or recklessly making a false statement, on summary conviction a fine not exceeding the statutory maximum, and on conviction on indictment a fine or imprisonment for up to two years or both; and (2) in any other case, on summary conviction a fine not exceeding level 5 on the standard scale: s 21G(3)(a), (b) (as so added). As to the statutory maximum see PARA 43 note 12; and as to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(ii) Powers of the Secretary of State/340. Power to make regulations as to air cargo agents.

340. Power to make regulations as to air cargo agents.

For the purpose of protecting aircraft, aerodromes¹ and air navigation installations² against acts of violence³, the Secretary of State⁴ may make regulations⁵ in relation to persons, known as air cargo agents, who carry on a business of handling cargo⁶ to be delivered to an aircraft operator⁷ for carriage from any United Kingdom⁸ aerodrome by a civil aircraft⁹.

The regulations may provide for the maintenance of a list of approved air cargo agents¹⁰, for the authorisation for such approved air cargo agents to enter a restricted zone of an aerodrome for business purposes¹¹, and for different rules to apply to different classes of air cargo agents, or to different cases¹².

A person commits an offence if with intent to deceive he issues a document which purports to be issued by a person on a list of approved air cargo agents¹³.

1 As to the meaning of 'aerodrome' see PARA 324 note 5.

2 As to the meaning of 'air navigation installation' see PARA 331 note 4.

3 As to the meaning of 'act of violence' see PARA 331 note 2.

4 As to the Secretary of State see PARA 33.

5 See note 9.

6 'Cargo' includes stores and mail; and 'stores' means any goods intended for sale or use on an aircraft including spare parts and other articles of equipment, whether or not for immediate fitting: Aviation Security Act 1982 s 21F(6) (s 21F added by the Aviation and Maritime Security Act 1990 s 6).

7 As to the meaning of 'operator' see PARA 437; definition applied by the Aviation Security Act 1982 s 38(1).

8 As to the meaning of 'United Kingdom' see PARA 30 note 1.

9 Aviation Security Act 1982 s 21F(1) (as added: see note 6). Before making the regulations, the Secretary of State must consult organisations representing persons who may be affected by the regulations: s 21F(3) (as so added). Any statutory instrument containing regulations under s 21F is subject to annulment in pursuance of a resolution of either House of Parliament: s 21F(4) (as so added). As to the regulations made see the Aviation Security (Air Cargo Agents) Regulations 1993, SI 1993/1073 (amended by SI 1996/1607; and SI 1998/1152).

As to the carrying out of searches in relation to cargo received from a cargo agent see the Aviation Security Act 1982 s 21F(5) (as so added).

10 See the Aviation Security Act 1982 s 21F(2)(a) (as added: see note 6). The regulations may specify how a name is to be included or removed from the list in accordance with criteria defined in the regulations: see s 21F(2)(a) (as so added). See note 9.

11 See the Aviation Security Act 1982 s 21F(2)(b) (as added: see note 6). As to restricted zones see PARA 333. See note 9.

12 See the Aviation Security Act 1982 s 21F(2)(c)-(f) (as added: see note 6).

13 Aviation Security Act 1982 s 21FA(1) (s 21FA added by the Anti-terrorism, Crime and Security Act 2001 s 87). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both: Aviation Security Act 1982 s 21FA(2) (as so added). As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(ii) Powers of the Secretary of State/341. Air navigation installations.

341. Air navigation installations.

The Secretary of State¹ may give certain directions to the authority responsible for one or more air navigation installations so as to relate to all installations for which it is responsible or to specified installations or classes of installations².

Certain provisions of the Aviation Security Act 1982 relating to the protection of aerodromes³ have effect in relation to air navigation installations⁴ in the United Kingdom⁵. Where an air navigation installation does not form part of an aerodrome⁶, those provisions have effect as if any reference in them to an aerodrome were a reference to such an air navigation installation and any reference to the manager⁷ of an aerodrome were a reference to the authority responsible for such an air navigation installation⁸. Where an air navigation installation is part of an aerodrome in the United Kingdom, those provisions have effect as if reference in them to an aerodrome were a reference either to an aerodrome or to an air navigation installation which forms part of an aerodrome or to so much of an aerodrome as does not consist of an air navigation installation⁹.

1 As to the Secretary of State see PARA 33.

2 Aviation Security Act 1982 s 21(6).

3 I.e. the Aviation Security Act 1982 ss 11, 13, 13A, 14-16, 20: see PARA 332 et seq.

4 As to the meaning of 'air navigation installation' see PARA 331 note 4.

5 Aviation Security Act 1982 s 21(1) (amended by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 12). As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the modification of those provisions relating to the service of notices and the giving of directions see the Aviation Security Act 1982 s 21(4). Any reference in s 17, s 18(1), s 18A, s 18B, s 18E or s 19(1) (see PARA 345 et seq) to a direction given under a provision therein mentioned is to be construed as including a reference to a direction given under that provision as applied or modified by provisions of s 21: s 21(7) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 12). Notwithstanding anything in the Aviation Security Act 1982 s 20(2)(a) (see PARA 342), a person inspecting an air navigation installation under that provision (or under that provision as applied or modified by s 21) is not empowered thereby to test any apparatus or equipment which constitutes or forms part of the air navigation installation: s 21(8).

6 As to the meaning of 'aerodrome' see PARA 324 note 5.

7 As to the meaning of 'manager' see PARA 324 note 5.

8 Aviation Security Act 1982 s 21(2). As to the authority responsible for an air navigation installation see PARA 332 note 7. Section 21(2) does not apply in relation to a direction under s 13(3) (see PARA 336), except in certain circumstances: see s 21(5).

9 Aviation Security Act 1982 s 21(3)(a)-(c). Accordingly a notice under s 11 (see PARA 332) or a direction under s 13 (see PARA 336) or s 14 (see PARA 338) may be served or given in respect of the whole of the aerodrome, in respect of the air navigation installation separately or in respect of so much of the aerodrome as does not consist of an air navigation installation: s 21(3). Section 21(3) does not apply in relation to a direction under s 13(3) (see PARA 336), except in certain circumstances: see s 21(5).

UPDATE

341-352 Air navigation installations ... Offences relating to security at aerodromes

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(iii) Inspection/342. Inspection of aircraft and aerodromes.

(iii) Inspection

342. Inspection of aircraft and aerodromes.

In order to enable the Secretary of State¹ to determine whether to give a direction under Part II of the Aviation Security Act 1982² or to ascertain whether such a direction or enforcement notice³ is being or has been complied with, an authorised person⁴ has power to inspect aircraft registered or operating in the United Kingdom⁵, aerodromes⁶ in the United Kingdom or land outside such an aerodrome and occupied for business purposes by a person who for business purposes either also occupies land within an aerodrome or has access to a restricted zone of an aerodrome⁷.

Inspectors may (1) test property found in aircraft⁸; (2) subject aerodromes and property found thereon or on relevant land outside the aerodrome to such tests as they think necessary⁹; (3) ascertain and test any security practice or procedure established by the person in charge¹⁰; and (4) require information from aircraft operators, aerodrome managers or land occupiers¹¹. For inspection purposes, an authorised person may, without using force, enter an aircraft and detain it, enter any building or works, and enter upon any land in an aerodrome as well as on land outside an aerodrome¹².

Any person who without reasonable excuse fails to furnish information as required by an authorised person, or who knowingly or recklessly makes a statement which is false in a material particular, is guilty of an offence¹³.

1 As to the Secretary of State see PARA 33.

2 ie the Aviation Security Act 1982 ss 10-24A.

3 As to enforcement notices see PARAS 348-350.

4 As to the meaning of 'authorised person' see PARA 348 note 1.

5 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

6 As to the meaning of 'aerodrome' see PARA 324 note 5.

7 Aviation Security Act 1982 s 20(1) (amended by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 11). As to restricted zones see PARA 333.

8 Aircraft themselves may not be tested, nor may any apparatus or equipment installed in them: see the Aviation Security Act 1982 s 20(2)(a) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 11).

9 See the Aviation Security Act 1982 s 20(2)(a) (as amended: see note 8).

10 Aviation Security Act 1982 s 20(2)(aa) (added by the Aviation and Maritime Security Act 1990 Sch 1 para 11).

11 Aviation Security Act 1982 s 20(2)(b) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 11). As to the meaning of 'operator' see PARA 437; definition applied by the Aviation Security Act 1982 s 38(1). As to the meanings of 'aerodrome' and 'manager' see PARA 324 note 5.

12 Aviation Security Act 1982 s 20(3), (4) (s 20(3) amended by the Aviation and Maritime Security Act 1990 Sch 1 para 11).

13 Aviation Security Act 1982 s 20(5) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 11). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or to both: Aviation Security Act 1982 s 20(5). As to the statutory maximum see PARA 43 note 12.

UPDATE

341-352 Air navigation installations ... Offences relating to security at aerodromes

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(iv) Directions/343. Matters included in directions.

(iv) Directions

343. Matters included in directions.

Apart from the provision of personnel to guard aircraft, aerodromes¹, persons or property² against acts of violence³, the Aviation Security Act 1982 provides for a number of matters which may be included in directions⁴.

Thus a direction imposing restrictions in relation to aircraft⁵ or requiring the promotion of searches⁶ may specify the minimum number of persons who may carry out searches, their qualifications, the manner in which any such search is to be carried out, and any apparatus, equipment or other aids to be used for such purpose⁷. The direction may also require the person concerned to inform the chief officer of police for the police area⁸ in which the searches are to be carried out that the Secretary of State⁹ considers it appropriate that constables¹⁰ should be authorised to carry, and should carry, firearms¹¹ when carrying out the searches¹².

Where a direction requires modifications or alterations to aircraft or the installation of additional apparatus or equipment on an aircraft¹³, it must include the requirement that such actions are undertaken by persons approved by the Civil Aviation Authority ('CAA')¹⁴.

Other directions¹⁵ may specify the minimum number of persons to be employed for the purposes of any measures to be taken by the person to whom the direction is given, and the qualifications which the persons so employed must have, as well as any apparatus, equipment or other aids to be used for those purposes¹⁶.

1 As to the meaning of 'aerodrome' see PARA 324 note 5.

2 See PARA 336.

3 As to the meaning of 'act of violence' see PARA 331 note 2.

4 See the Aviation Security Act 1982 s 15; and the text and notes 5-16.

5 See PARA 335.

6 See PARAS 336-337.

7 Aviation Security Act 1982 s 15(1) (amended by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 7). 'Qualifications' includes training and experience: Aviation Security Act 1982 s 15(7). Nothing in s 15(1)-(5) is to be construed as limiting the generality of any of the provisions of ss 10-14 (see PARA 331 et seq): s 15(6).

8 As to the chief officers of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178 et seq. As to police areas see **POLICE** vol 36(1) (2007 Reissue) PARAS 136-138.

9 As to the Secretary of State see PARA 33.

10 As to the meaning of 'constable' see PARA 324 note 9.

11 'Firearm' includes an airgun or air pistol: Aviation Security Act 1982 s 38(1).

12 Aviation Security Act 1982 s 15(5) (substituted by the Aviation and Maritime Security Act 1990 Sch 1 para 7).

13 See PARA 335.

14 Aviation Security Act 1982 s 15(2) (substituted by the Aviation and Maritime Security Act 1990 Sch 1 para 7). As to the CAA see PARA 50 et seq.

15 le made under the Aviation Security Act 1982 s 14: see PARA 338.

16 Aviation Security Act 1982 s 15(4) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 7).

UPDATE

341-352 Air navigation installations ... Offences relating to security at aerodromes

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(iv) Directions/344. Limitations on scope of directions.

344. Limitations on scope of directions.

A direction by the Secretary of State¹ may not require or authorise any person to carry a firearm².

A direction by the Secretary of State may not apply to any military, customs or police aircraft³. Nor may it apply to an aircraft operated by a foreign government unless it is being used for the carriage of passengers or cargo for reward⁴.

A direction may not be construed as authorising an act of violence⁵ although constables⁶ or other specified persons⁷ may use reasonable force when exercising powers conferred on them by the Aviation Security Act 1982⁸.

A direction has no effect outside the United Kingdom⁹, save in relation to aircraft registered in the United Kingdom¹⁰, and may not require anything to be done (or not done) in contravention of any provision of the local law, save for any such provision relating to breach of contract¹¹.

The provisions described above are not to be construed as derogating from any exemption or immunity of the Crown¹².

1 'Direction' in this context means a direction under the Aviation Security Act 1982 s 12, 13, 13A or 14 (see PARAS 335-338): s 16(8) (amended by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 8). As to the Secretary of State see PARA 33.

2 Aviation Security Act 1982 s 16(1). This is expressed to be without prejudice to s 15(5) (carrying of firearms by constables): see PARA 343.

3 Aviation Security Act 1982 s 16(2).

4 See the Aviation Security Act 1982 s 16(3). As to the carriage of passengers and cargo for reward see PARA 363.

5 As to the meaning of 'act of violence' see PARA 331 note 2.

6 As to the meaning of 'constable' see PARA 324 note 9.

7 The persons specified in the direction exercising powers conferred by the Aviation Security Act 1982 s 7(1) or s 13(3): see PARA 336.

8 Aviation Security Act 1982 s 16(4) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 8).

9 As to the meaning of 'United Kingdom' see PARA 30 note 1.

10 As to the registration of aircraft see PARA 367 et seq.

11 Aviation Security Act 1982 s 16(5). See further **CONFLICT OF LAWS; CONTRACT**.

12 Aviation Security Act 1982 s 16(7). The text refers to exemption or immunities of the Crown in relation to Pt II (ss 10-24A). As to Crown immunity generally see **CROWN PROCEEDINGS AND CROWN PRACTICE**.

UPDATE

341-352 Air navigation installations ... Offences relating to security at aerodromes

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(iv) Directions/345. General or urgent directions.

345. General or urgent directions.

A direction¹ need not be addressed to a particular person, but may be framed in general terms applicable to all persons to whom such a direction may be given or to any class of such persons to which that particular person belongs².

Where it appears to the Secretary of State³ that an exception from a given direction is urgently needed, he may notify, otherwise than in writing, the person subject to the direction and authorise him to disregard, within the specified terms, such a direction⁴. The notification ceases to have effect either when a direction, in writing, is given to that same person varying or revoking the original direction or at the end of a period of 30 days from the date on which the notification was given if no new direction in writing is given⁵.

1 le any direction made under the Aviation Security Act 1982 s 12, 13, 13A or 14: see PARAS 335-338.

2 Aviation Security Act 1982 s 17(1) (amended by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 9).

3 As to the Secretary of State see PARA 33.

4 See the Aviation Security Act 1982 s 17(2), (4) (s 17(2) amended by the Aviation and Maritime Security Act 1990 Sch 1 para 9).

5 Aviation Security Act 1982 s 17(3).

UPDATE

341-352 Air navigation installations ... Offences relating to security at aerodromes

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(iv) Directions/346. Effects of directions.

346. Effects of directions.

Where a direction¹ requires anything to be done or not done in the United Kingdom², the direction has effect notwithstanding anything contained either in any contract³ or in any statute or rule of law; thus no proceedings in any United Kingdom court⁴, whether civil or criminal, lie against a person carrying out such a direction⁵.

In so far as a direction requires anything to be done or not done outside the United Kingdom, the direction has effect notwithstanding anything contained in any contract; thus where there is inconsistency between the direction and a contract, the direction must, without prejudice to any proceedings in a court other than a United Kingdom court, be construed as requiring compliance with it even though such compliance would be in breach of contract⁶. No proceedings for breach of contract in a United Kingdom court lie against a person complying with the direction outside the United Kingdom provided the contract is a United Kingdom contract⁷.

1 le a direction under the Aviation Security Act 1982 Pt II (ss 10-24A): see PARA 332 et seq. Reference to a direction in s 19 includes a reference to an enforcement notice: s 19(4A) (added by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 10). As to enforcement notices see PARAS 348-350. The provisions of the Aviation Security Act 1982 s 19(2)-(5) (see the text and notes 2-7), where they refer to a direction, are to be construed as referring to that direction as it has effect subject to any limitation imposed on its operation by s 16 (see PARA 344) or by an exemption or immunity of the Crown; and any reference in those provisions to compliance with such a direction is to be construed as a reference to compliance with it subject to any limitation so imposed: s 19(1). As to Crown immunity generally see **CROWN PROCEEDINGS AND CROWN PRACTICE**.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 The contract may be a United Kingdom contract or not: Aviation Security Act 1982 s 19(2). 'United Kingdom contract' means a contract which is either expressed to have effect in accordance with the law of the United Kingdom or of part of the United Kingdom or, not being so expressed, is a contract the law applicable to which is the law of the United Kingdom or of part of the United Kingdom: s 19(5) (definition amended by the Contracts (Applicable Law) Act 1990 s 5, Sch 4 para 5). See further **CONFLICT OF LAWS**.

4 'United Kingdom court' means a court exercising jurisdiction in any part of the United Kingdom under the law of the United Kingdom or of part of the United Kingdom: Aviation Security Act 1982 s 19(5).

5 Aviation Security Act 1982 s 19(2).

6 Aviation Security Act 1982 s 19(3). As to breach of contract generally see **CONTRACT**.

7 Aviation Security Act 1982 s 19(4).

UPDATE

341-352 Air navigation installations ... Offences relating to security at aerodromes

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(iv) Directions/347. Objections to directions.

347. Objections to directions.

Any person required by a direction under the Aviation Security Act 1982 to construct, execute, alter, demolish or remove a building or other works¹ may by notice served on the Secretary of State² object to the direction on the grounds that the measures to be taken are unnecessary, or excessively onerous or inconvenient, and must be modified³.

The Secretary of State, after considering the grounds of the objection⁴, may either confirm the direction as originally given or with modifications or may withdraw the direction⁵. The direction takes effect when it is confirmed, with or without modifications, by a notice served on the objector⁶.

¹ See PARA 338.

² As to the Secretary of State see PARA 33.

³ Aviation Security Act 1982 s 18(1), (2). There may not be any objection where the direction states that the measures are urgently required and that it is to take effect immediately: s 18(1)(b). The notice of objection must be served within 30 days of the date on which the direction was given: s 18(2). The objection suspends the effects of the direction: see s 18(3).

⁴ The objector may require to be heard: see the Aviation Security Act 1982 s 18(3).

⁵ Aviation Security Act 1982 s 18(3).

⁶ Aviation Security Act 1982 s 18(3).

UPDATE

341-352 Air navigation installations ... Offences relating to security at aerodromes

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(v) Enforcement Notices/348. Enforcement notices.

(v) Enforcement Notices

348. Enforcement notices.

Where an authorised person¹ believes that a person has failed to comply with any general requirement² of a direction given to him under the Aviation Security Act 1982³, he may serve on that person an enforcement notice specifying those requirements which have not been complied with and the measures that ought to be taken to remedy the situation⁴.

The enforcement notice may specify in greater detail the measures which were only described in general terms in the direction⁵. It may be framed so as to give a choice between different ways of complying with the specified general requirements⁶.

Where a direction imposes restrictions in relation to aircraft⁷, the enforcement notice must require the person to whom the direction was given not to effect searches until the specified measures have been taken⁸ within a reasonable specified period⁹. Similarly, where a direction requires aerodrome managers or other persons to promote searches¹⁰ or to take other measures¹¹, the enforcement notice must either require that the specified measures are taken within a specified period¹² or that specified things are not done until the specified measures are taken¹³.

An enforcement notice requiring a person not to cause or permit anything to be done is to be construed as requiring him to take all such steps as in any particular circumstances are practicable and necessary to prevent that thing from being done¹⁴.

Any person who, without reasonable excuse, fails to comply with an enforcement notice is guilty of an offence¹⁵ and is guilty of a further offence if, after such conviction, the failure to comply is continued without reasonable excuse¹⁶. Any person who intentionally interferes with any building constructed or works executed or anything installed in compliance with an enforcement notice is guilty of an offence¹⁷.

1 'Authorised person' means a person authorised in writing by the Secretary of State for the purposes of the Aviation Security Act 1982 Pt II (ss 10-24A): s 24A(1) (added by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 16). As to the Secretary of State see PARA 33.

2 For the purposes of the Aviation Security Act 1982 s 18A, a requirement of a direction given by the Secretary of State under s 12, 13, 13A or 14 (see PARAS 335-338) is a 'general requirement' if the provision imposing the requirement has been included in two or more directions given to different persons and is framed in general terms applicable to all the persons to whom those directions are given: s 18A(2) (s 18A added by the Aviation and Maritime Security Act 1990 s 4).

3 ie under the Aviation Security Act 1982 s 12, 13, 13A or 14: see PARAS 335-338.

4 Aviation Security Act 1982 s 18A(1) (as added: see note 2). Before he may serve any enforcement notice that relates to a direction given under s 12(2) (see PARA 335), the authorised person must inform the Civil Aviation Authority ('CAA') of the proposed measures and take account of any advice the CAA may give him: s 18A(3) (as so added). As to the CAA see PARA 50 et seq.

5 Aviation Security Act 1982 s 18B(1) (s 18B added by the Aviation and Maritime Security Act 1990 s 4). The enforcement notice may not impose a requirement which could not have been imposed by a direction given by the Secretary of State under the provision under which the direction was given: Aviation Security Act 1982 s 18B(1) (as so added).

6 Aviation Security Act 1982 s 18B(2) (as added: see note 5).

- 7 See PARA 335.
- 8 See the Aviation Security Act 1982 s 18B(3) (as added: see note 5).
- 9 See the Aviation Security Act 1982 s 18B(4) (as added: see note 5).
- 10 See PARAS 336-337.
- 11 See PARA 338.
- 12 Aviation Security Act 1982 s 18B(5)(a) (as added: see note 5). Where the measures consist in construction, execution, alteration, demolition or removal of buildings or other works, the period must be at least 30 days from the date of service of the notice, and seven days in any other case: s 18B(5)(a)(i), (ii) (as so added).
- 13 Aviation Security Act 1982 s 18B(5)(b) (as added: see note 5).
- 14 Aviation Security Act 1982 s 18B(6) (as added: see note 5). This is expressed to be subject to s 18E(2): see PARA 349.
- 15 Aviation Security Act 1982 s 18C(1) (s 18C added by the Aviation and Maritime Security Act 1990 s 4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine: Aviation Security Act 1982 s 18C(1)(a), (b) (as so added). As to the statutory maximum see PARA 43 note 12.
- 16 Aviation Security Act 1982 s 18C(2) (as added: see note 15). A person guilty of such an offence is liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues: s 18C(2) (as so added). As to the standard scale see PARA 50 note 8.
- 17 Aviation Security Act 1982 s 18C(3) (as added: see note 15). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine: s 18C(3) (as so added).

UPDATE

341-352 Air navigation installations ... Offences relating to security at aerodromes

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(v) Enforcement Notices/349. Effects of enforcement notices.

349. Effects of enforcement notices.

The ownership of any property is not affected by being placed on, or under, or affixed to, any land in compliance with an enforcement notice¹.

Where a person is served with an enforcement notice, that person is not considered, for the purposes of prosecution, to have failed to comply with the direction² by reason of the matters specified in the notice³. The fact that the notice specifies certain general requirements⁴ of the direction as not having been complied with may not be, in any proceedings, evidence that any other requirement of the direction has been complied with⁵.

An enforcement notice served on any person may be revoked by a notice served on him by an authorised person⁶, and may be varied by a further enforcement notice⁷.

1 Aviation Security Act 1982 s 18E(3) (s 18E added by the Aviation and Maritime Security Act 1990 s 4). As to enforcement notices see PARA 348.

2 'Direction' means a direction under the Aviation Security Act 1982 s 12, 13, 13A or 14 (see PARAS 335-338): s 18E(7) (as added: see note 1).

3 Aviation Security Act 1982 s 18E(4) (as added: see note 1). This provision does not apply to any proceedings started before the service of the enforcement notice: s 18E(5) (as so added).

4 As to general requirements see PARA 348 note 2.

5 Aviation Security Act 1982 s 18E(6) (as added: see note 1).

6 As to the meaning of 'authorised person' see PARA 348 note 1.

7 Aviation Security Act 1982 s 18E(1) (as added: see note 1). The provisions of ss 15, 16 (see PARAS 343-344) apply to an enforcement notice as they apply to the direction to which the notice relates: s 18E(2) (as so added).

UPDATE

341-352 Air navigation installations ... Offences relating to security at aerodromes

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(v) Enforcement Notices/350. Objections to enforcement notices.

350. Objections to enforcement notices.

The person on whom an enforcement notice¹ is served may serve on the Secretary of State² a notice in writing of his objection to the enforcement notice³. The grounds of the objection must be specified in the notice and may be either that the general requirements⁴ of the direction had been complied with, or that a requirement imposed by the enforcement notice could not have been imposed by the relevant direction or that such a requirement is either unnecessary or is excessively onerous or inconvenient and should be modified⁵.

The Secretary of State must consider the grounds of the objection⁶ and serve on the objector a notice in writing which either confirms the enforcement notice as originally served or with modifications, or cancels the enforcement notice⁷.

When an objection to an enforcement notice has been served, the enforcement notice does not take effect until confirmed, with or without modifications, by the Secretary of State⁸, save where the enforcement notice required the recipient not to cause or permit things to be done⁹ in respect of aircraft¹⁰ or searches¹¹.

1 As to enforcement notices see PARA 348.

2 As to the Secretary of State see PARA 33.

3 Aviation Security Act 1982 s 18D(1) (s 18D added by the Aviation and Maritime Security Act 1990 s 4). The notice must be served within seven days of the date on which the enforcement notice was served, save where the enforcement notice specifies measures involving buildings and other works, in which case the period for service is 30 days: Aviation Security Act 1982 s 18D(2) (as so added).

4 As to general requirements see PARA 348 note 2.

5 Aviation Security Act 1982 s 18D(1), (3) (as added: see note 3).

6 The objector is entitled to be heard by a person appointed by the Secretary of State: Aviation Security Act 1982 s 18D(4) (as added: see note 3).

7 Aviation Security Act 1982 s 18D(4) (as added: see note 3).

8 Aviation Security Act 1982 s 18D(5)(b) (as added: see note 3).

9 Ie under the Aviation Security Act 1982 s 18B(3), (5)(b): see PARA 348. As to the construction of an enforcement notice requiring a person not to cause or permit anything to be done see PARA 348.

10 See PARA 335.

11 Aviation Security Act 1982 s 18D(5)(a) (as added: see note 3). As to searches see PARAS 336-337.

UPDATE

341-352 Air navigation installations ... Offences relating to security at aerodromes

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(vi) Compensation/351.
Compensation and reimbursement of expenses.

(vi) Compensation

351. Compensation and reimbursement of expenses.

If the value of any land to which a person is entitled is depreciated in consequence of the taking of measures¹ in compliance with a particular direction² or enforcement notice³, or the person having such an interest suffers loss in consequence of such measures by being disturbed in his enjoyment of any of that land, that person is entitled to compensation equal to the amount of the depreciation or loss⁴. If any land other than the land on which the measures are taken is injuriously affected by the taking of those measures, any person having an interest in that other land is entitled to compensation equal to the amount of any loss he suffers in consequence⁵.

Any such compensation to which a person is entitled is payable to him by the person who took the measures⁶.

1 le measures consisting of the construction, execution, alteration, demolition or removal of a building or other works undertaken by the person to whom a direction was given or on whom an enforcement notice was served (see PARAS 606, 616): Aviation Security Act 1982 s 22(1) (amended by the Aviation and Maritime Security Act 1990 s 8, Sch 1 para 13).

2 See PARA 338.

3 See PARA 348.

4 Aviation Security Act 1982 s 22(2). For further provision regarding the details and calculation of compensation, including the power to make regulations in that behalf see s 22(5), Sch 1 (amended by the Aviation and Maritime Security Act 1990 s 53(2), Sch 1 para 20, Sch 4). At the date at which this volume states the law no such regulations had been made.

5 Aviation Security Act 1982 s 22(3).

6 Aviation Security Act 1982 s 22(4) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 13).

UPDATE

341-352 Air navigation installations ... Offences relating to security at aerodromes

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

351 Compensation and reimbursement of expenses

NOTE 4--Aviation Security Act 1982 Sch 1 amended: SI 2009/1307.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/4. AERODROMES AND LAND/(11) POLICING AND PROTECTION OF AERODROMES/(vii) Offences/352. Offences relating to security at aerodromes.

(vii) Offences

352. Offences relating to security at aerodromes.

The Aviation Security Act 1982 provides for a number of offences in order to ensure a better protection of aircraft, aerodromes¹ and air navigation installations².

It is thus an offence:

- 248 (1) to fail to comply without reasonable excuse with a direction or an enforcement notice³;
- 249 (2) to obstruct intentionally a person acting in the exercise of his functions or an authorised person in the exercise of his powers⁴;
- 250 (3) to interfere intentionally with buildings constructed or works executed in compliance with such a direction or enforcement order⁵;
- 251 (4) to fail to give the required information to the Secretary of State or an authorised person⁶; and
- 252 (5) to furnish information false in a material particular, knowingly or recklessly⁷.

The penalty for these offences is, on summary conviction, a fine not exceeding the statutory maximum and, on conviction on indictment, a fine or imprisonment for a term not exceeding two years or both⁸.

It is a further offence to continue to fail to comply with such a direction or enforcement order after having been convicted for such a failure. The penalty is, on summary conviction, a fine not exceeding one-tenth of level 5 on the standard scale for each day on which the failure continues⁹.

It is also an offence:

- 253 (a) to make, knowingly or recklessly, false statements relating to baggage, cargo or stores¹⁰ or in connection with identity documents¹¹;
- 254 (b) to go, or to remain without authorisation, on any part of a restricted zone of an aerodrome or of an air navigation installation outside an aerodrome¹²;
- 255 (c) to get into or onto an aircraft without authorisation or to remain on an aircraft after being requested to leave¹³; and
- 256 (d) to pretend to be an authorised person¹⁴.

The penalty for these offences is, on summary conviction, a fine not exceeding level 5 on the standard scale¹⁵.

1 As to the meaning of 'aerodrome' see PARA 324 note 5.

2 As to the meaning of 'air navigation installation' see PARA 331 note 4.

3 See the Aviation Security Act 1982 ss 12(9), 13(4)(a), 13A(3), 14(7) (ss 12(9), 13(4)(a), 14(7) amended by, and s 13A(3) added by, the Aviation and Maritime Security Act 1990 ss 3, 8, Sch 1 paras 4-6). See further PARAS 333-338. The text refers to a direction or enforcement notice given under the Aviation Security Act 1982 Pt II (ss 10-24A).

- 4 See the Aviation Security Act 1982 ss 13(4)(b), 21E(1)(a) (s 13(4)(b) amended by, and s 21E(1)(a) added by, the Aviation and Maritime Security Act 1990 ss 5, 8, Sch 1 para 5). See further PARAS 336-342.
- 5 See the Aviation Security Act 1982 s 14(7)(b) (amended by the Aviation and Maritime Security Act 1990 Sch 1 para 6). See further PARA 338.
- 6 See the Aviation Security Act 1982 ss 11(5)(a), 20(5)(b) (amended by the Aviation and Maritime Security Act 1990 Sch 1 paras 2, 11). See further PARAS 332, 342.
- 7 See the Aviation Security Act 1982 ss 11(5)(b), 20(5)(c). See further PARAS 332, 342.
- 8 See the Aviation Security Act 1982 ss 11(5), 12(9), 13(4), 13A(3), 14(7), 20(5), 21E(2) (ss 11(5), 12(9), 13(4), 14(7), 20(5) amended by, and ss 13A(3), 21E(2) added by, the Aviation and Maritime Security Act 1990 ss 2, 5, 53(2), Sch 1 paras 2, 4-6, 11, Sch 4). See further PARAS 332, 335-338, 342. As to the statutory maximum see PARA 43 note 12.
- 9 See the Aviation Security Act 1982 ss 12(10), 13(4A), 13A(4), 14(7A) (all added by the Aviation and Maritime Security Act 1990 s 2, Sch 1 paras 4-6). See further PARAS 335-338.
- 10 See the Aviation Security Act 1982 s 21A(1) (ss 21A-21E added by the Aviation and Maritime Security Act 1990 s 5).
- 11 See the Aviation Security Act 1982 s 21B(1) (as added: see note 10).
- 12 See the Aviation Security Act 1982 s 21C(1) (as added: see note 10). See further PARA 333.
- 13 See the Aviation Security Act 1982 s 21D(1) (as added: see note 10).
- 14 See the Aviation Security Act 1982 s 21E(1)(b) (as added: see note 10). As to the meaning of 'authorised person' see PARA 348 note 1.
- 15 See the Aviation Security Act 1982 ss 21A(4), 21B(5), 21C(3), 21D(2), 21E(3) (all as added: see note 10). As to the standard scale see PARA 50 note 8.

UPDATE

341-352 Air navigation installations ... Offences relating to security at aerodromes

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/353. Air navigation orders.

5. AIRCRAFT

(1) INTRODUCTION

353. Air navigation orders.

Provision may be made by Orders in Council for implementing the Chicago Convention¹ and generally for regulating air navigation². Such Orders in Council are known as air navigation orders³ and may secure compliance with their provisions by providing for persons who fail to comply to be guilty of offences and subject to specified penalties⁴.

The principal order currently in force is the Air Navigation Order 2005, which establishes a system for the registration and marking of aircraft and for the certification and licensing of aircraft airworthiness, and makes provision in relation to air operators and crews, the rules of the air and air traffic service⁵. The Air Navigation Order 2005 has been amplified in many respects by regulations made under it⁶. The Air Navigation Order 2005 and regulations made under it apply, unless the context otherwise requires, to or in relation to all aircraft registered in the United Kingdom wherever they may be⁷, and, in so far as they apply to other aircraft, to such other aircraft when within the United Kingdom or on, or in the neighbourhood of, an offshore installation⁸. In addition, the Civil Aviation Authority ('CAA')⁹ may direct that specified provisions of the Air Navigation Order 2005 and of regulations made or having effect under it are to apply to certain aircraft not registered in the United Kingdom¹⁰. Many of the provisions of the Air Navigation Order 2005 are, however, confined to aircraft registered in the United Kingdom; but where an aircraft flies within the United Kingdom unregistered when it should be registered¹¹, and flies in such a manner or in such circumstances that an offence against the Air Navigation Order 2005 or any regulations made under it would have been committed if it had been registered in the United Kingdom, the same offence is deemed to have been committed in respect of that aircraft¹². Except where otherwise expressly stated, the Air Navigation Order 2005 applies to all aircraft belonging to or employed in the service of the Crown¹³, but not generally to military aircraft¹⁴ or in relation to visiting forces¹⁵ and international headquarters¹⁶. In general (with certain exceptions)¹⁷ the Air Navigation Order 2005 does not apply to: any small balloon¹⁸; any kite weighing not more than two kilograms¹⁹; any small aircraft²⁰; or any parachute, including a parascending parachute²¹. The CAA may exempt from most provisions of the Air Navigation Order 2005, or from the regulations made or having effect under it, any aircraft or persons or classes of aircraft or persons, either absolutely or subject to such conditions as it thinks fit²².

Provision in connection with the environmental impact of air navigation, dealing principally with noise and emissions certification, is also made by Order in Council²³.

1 See the Civil Aviation Act 1982 s 60(1), (2)(a). The reference to the Chicago Convention is a reference to the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742): see the Civil Aviation Act 1982 s 105(1). As to the Chicago Convention see PARA 2 et seq. The object of the Chicago Convention is to lay down principles and make arrangements in order to facilitate the safe and orderly development of international civil aviation and the sound and economic operation of international air transport services: see the Chicago Convention preamble. For the purposes of the making of Orders in Council under the Civil Aviation Act 1982 s 60, the Chicago Convention includes the Annexes to it, relating to international standards and recommended practices (being Annexes adopted in accordance with the Convention), and any amendment of the Convention or any such Annex made in accordance with the Convention: Civil Aviation Act 1982 s 60(2)(a).

2 Civil Aviation Act 1982 s 60(2)(b).

3 An air navigation order may contain various provisions, including:

- 12 (1) provision as to the registration of aircraft in the United Kingdom (Civil Aviation Act 1982 s 60(3)(a));
- 13 (2) provision for prohibiting aircraft from flying unless certificates of airworthiness issued or validated under the order are in force with respect to them, and except upon compliance with such conditions as to maintenance or repair as may be specified in the order (s 60(3)(b));
- 14 (3) provision for the licensing, inspection and regulation of aerodromes, for access to aerodromes and places where aircraft have landed, for access to aircraft factories for the purpose of inspecting work carried on in relation to aircraft or parts of them, and for prohibiting or regulating the use of unlicensed aerodromes (s 60(3)(c));
- 15 (4) provision for prohibiting persons from engaging in, or being employed in or (except in the maintenance at unlicensed aerodromes of aircraft not used for or in connection with commercial, industrial or other gainful purposes) in connection with, air navigation in such capacities as may be specified in the order except in accordance with provisions in that behalf contained in the order, and for the licensing of those employed at aerodromes licensed under the order in the inspection or supervision of aircraft (s 60(3)(d));
- 16 (5) provision as to the conditions under which, and in particular the aerodromes to or from which, aircraft entering or leaving the United Kingdom may fly, and as to the conditions under which aircraft may fly from one part of the United Kingdom to another (s 60(3)(e));
- 17 (6) provision as to the conditions under which passengers may be carried by air and under which aircraft may be used for other commercial, industrial or gainful purposes (s 60(3)(f) (amended by the Aviation and Maritime Security Act 1990 s 53(2), Sch 4));
- 18 (7) provision as to the conditions under which goods may be carried by air, for prohibiting the carriage by air of goods of such classes as may be specified in the order, and for conferring, on such persons as may be so specified, powers relating to the enforcement of any such condition or prohibition (including powers to examine, take samples of, seize and detain any goods, powers to open any baggage or packages containing goods or to require them to be opened, and powers to require the production of any documents) (Civil Aviation Act 1982 60(3)(ff) (added by the Aviation and Maritime Security Act 1990 s 47));
- 19 (8) provision for minimising or preventing interference with the use or effectiveness of apparatus used in connection with air navigation, and for prohibiting or regulating the use of such apparatus and the display of signs and lights liable to endanger aircraft (Civil Aviation Act 1982 s 60(3)(g));
- 20 (9) provision generally for securing the safety, efficiency and regularity of air navigation and the safety of aircraft and of persons and property carried in them, for preventing aircraft endangering other persons and property and, in particular, for the detention of aircraft for any of the purposes specified in s 60(3) (s 60(3)(h));
- 21 (10) provision for safeguarding the health of persons on board aircraft (s 60(3)(ha) (added by the Civil Aviation Act 2006 s 8(1), (5)).
- 22 (11) provision for requiring persons engaged in, or employed in or in connection with, air navigation to supply meteorological information for the purposes of air navigation (s 60(3)(i));
- 23 (12) provision for regulating the making of signals and other communications by or to aircraft and persons carried in them (s 60(3)(j));
- 24 (13) provision for prohibiting aircraft from flying over such areas in the United Kingdom as may be specified (s 60(3)(l));
- 25 (14) provision for applying, adapting or modifying the enactments for the time being in force relating to customs or excise in relation to aerodromes and to aircraft and to persons and property carried in them and for preventing smuggling by air, and for permitting in connection with air navigation, subject to such conditions as appear to Her Majesty in Council to be requisite or expedient for the protection of the revenue, the importation of goods into the United Kingdom without payment of duty (s 60(3)(m));

- 26 (15) provision as to the manner and conditions of the issue, validation, renewal, extension or variation of any certificate, licence or other document required by the order (including the examinations and tests to be undergone), and as to the form, custody, production, cancellation, suspension, endorsement and surrender of any such document (s 60(3)(n));
- 27 (16) provision for specifying, subject to the consent of the Treasury, the fees to be paid in respect of the issue, validation, renewal, extension or variation of any certificate, licence or other document or the undergoing of any examination or test required by the order and in respect of any other matters in respect of which it appears to Her Majesty in Council to be expedient for the purpose of the order to charge fees (s 60(3)(p));
- 28 (17) provision for exempting from the provisions of the order or any other air navigation order any aircraft or persons or classes of aircraft or persons (s 60(3)(q));
- 29 (18) provision for prohibiting aircraft from taking off or landing in the United Kingdom unless there are in force in respect of those aircraft such certificates of compliance with standards as to noise as may be specified in the order and except upon compliance with the conditions of those certificates (s 60(3)(r)); and
- 30 (19) provision for regulating or prohibiting the flight of aircraft over the United Kingdom at speeds in excess of flight mach 1 (s 60(3)(s)).

As to certificates of airworthiness, and the validation of foreign certificates, see PARAS 376 et seq, 382. 'Flight' means a journey by air beginning when the aircraft in question takes off and ending when it next lands: s 105(1). 'Modifications' includes additions, omissions and amendments, and 'modify' is construed accordingly: s 105(1). 'Enactment' includes any enactment contained in an Act of the Parliament of Northern Ireland, an Order in Council under the Northern Ireland (Temporary Provisions) Act 1972 s 1(3) or a Measure of the Northern Ireland Assembly: s 105(1). As to the meaning of 'aerodrome' see PARA 175. As to the meaning of 'United Kingdom' see PARA 30 note 1. For these purposes, 'goods' includes mails or animals: s 60(6). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 512 et seq.

An air navigation order may make different provision with respect to different classes of aircraft, aerodromes, persons or property and with respect to different circumstances and with respect to different parts of the United Kingdom but must, so far as practicable, be so framed as not to discriminate in like circumstances between aircraft registered in the United Kingdom operated on charter terms by one air transport undertaking and such aircraft so operated by another such undertaking: s 60(4).

4 Civil Aviation Act 1982 s 61(1)(a). The power conferred by s 61(1)(a) may not include power to provide for offences to be triable only on indictment; to authorise the imposition, on summary conviction of any offence, of any term of imprisonment or of a fine exceeding the statutory maximum; or to authorise the imposition, on conviction on indictment of an offence, of a term of imprisonment exceeding two years: s 61(2). In the case of a provision about endangering an aircraft or a person in an aircraft, the power conferred by s 61(1)(a) may not include power to authorise the imposition, on conviction on indictment of an offence, of a term of imprisonment exceeding five years: s 61(2A) (added by the Aviation (Offences) Act 2003 s 2). However, in the case of a provision having effect by virtue of s 60(3)(l) (see note 3 head (13)), an order may provided for the taking of such steps (including firing on aircraft) as may be specified: s 61(1)(b). Provision is also made for the bringing of proceedings for an offence against an air navigation order: see s 61(3)-(5), (7), (8). As to the statutory maximum see PARA 43 note 12.

5 See the Air Navigation Order 2005, SI 2005/1970.

6 Eg the Air Navigation (General) Regulations 2006, SI 2006/601 (see PARA 354); the Rules of the Air Regulations 2007, SI 2007/734 (see PARA 357); and the Air Navigation (Restriction of Flying) (Nuclear Installations) Regulations 2007, SI 2007/1929 (see PARA 574). In addition, the Air Navigation (Cosmic Radiation) (Keeping of Records) Regulations 2000, SI 2000/1380 (see PARA 485); the Air Navigation (Restriction of Flying) (Nuclear Installations) Regulations 2001, SI 2001/1607 (see PARA 574); the Air Navigation (Restriction of Flying) (Prisons) Regulations 2001, SI 2001/1657 (amended by SI 2007/2377) (see PARA 574); the Air Navigation (Dangerous Goods) Regulations 2002, SI 2002/2786 (see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 193 et seq); and the Air Navigation (Restriction of Flying) (Specified Area) Regulations 2005, SI 2005/964, which were made under previous air navigation orders, continue in effect under the Air Navigation Order 2005, SI 2005/1970, by virtue of the Interpretation Act 1978 ss 17(2)(b), 23(2).

7 Air Navigation Order 2005, SI 2005/1970, art 149(1)(a). As to the registration and nationality of aircraft see PARAS 367-374. In addition, the orders are generally applicable to persons wherever they may be: see art 149(1)(c)-(e), (2).

8 Air Navigation Order 2005, SI 2005/1970, art 149(1)(b). As to the meaning of 'offshore installation' see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1684. Provision is made in connection with aircraft not registered in the United Kingdom flying in transit over territorial waters: see art 150, Sch 15.

9 As to the CAA see PARA 50 et seq.

10 See the Air Navigation Order 2005, SI 2005/1970, art 151. This applies to any aircraft registered elsewhere than in the United Kingdom but for the time being under the management of a person who, or of persons each of whom, is qualified to hold a legal or beneficial interest by way of ownership in an aircraft registered in the United Kingdom: see art 151. As to such persons see PARA 368.

11 See PARA 367.

12 See the Air Navigation Order 2005, SI 2005/1970, art 3(5). As to offences see PARA 620 et seq.

13 See the Air Navigation Order 2005, SI 2005/1970, art 152(1).

14 See the Air Navigation Order 2005, SI 2005/1970, art 152(5), (6). As to exemptions see PARA 359. As to the meaning of 'military aircraft' see PARA 31 note 5.

15 See the Air Navigation Order 2005, SI 2005/1970, art 152(4). As to the meaning of 'visiting force' see PARA 31 note 6.

16 See the Air Navigation Order 2005, SI 2005/1970, art 152(4). As to the meaning of 'international headquarters' see PARA 31 note 7.

17 The provisions which do apply are the Air Navigation Order 2005, SI 2005/1970, art 68 (issue of aerial application certificates: see PARA 540), art 74 (endangering safety of person or property: see PARA 524), art 96(1) (power to restrict or prohibit flying: see PARA 574), art 97 (restriction on use of balloons, kites, airships, gliders and parascending parachutes: see PARA 559), art 98 (regulation of small aircraft: see PARA 561), art 144(1)(b), (c) (power to prevent flying for safety reasons: see PARA 528), art 155(1), (2) (definitions).

18 Air Navigation Order 2005, SI 2005/1970, art 164(a). 'Small balloon' means a balloon not exceeding 2 metres in any linear dimension at any stage of its flight, including any basket or other equipment attached to the balloon: art 155(1). As to the meaning of 'flight' see PARA 530.

19 Air Navigation Order 2005, SI 2005/1970, art 164(b).

20 Air Navigation Order 2005, SI 2005/1970, art 164(c). 'Small aircraft' means any unmanned aircraft, other than a balloon or a kite, weighing not more than 20 kilograms without its fuel but including any articles or equipment installed in or attached to the aircraft at the commencement of its flight: art 155(1).

21 Air Navigation Order 2005, SI 2005/1970, art 164(d). 'Parascending parachute' means a parachute which is towed by cable in such a manner as to cause it to ascend: art 155(1).

22 Air Navigation Order 2005, SI 2005/1970, art 153. There can be no exemption from art 85 (protection of air crew from cosmic radiation: see PARA 485), art 87 (keeping and production of records of exposure to cosmic radiation: see PARA 485), arts 93, 138, 140 (restrictions on foreign aircraft engaged in carriage for hire or reward or aerial photography and survey: see PARA 542), art 139 (filing and approval of tariffs: see PARA 363), art 141 (flights over any foreign country: see PARA 543), and art 154 (right of appeal to county court in licensing matters: see PARA 95): art 153.

23 See eg the Air Navigation (Environmental Standards) Order 2002, SI 2002/798; and PARA 388 et seq. The scope and application of this order is similar to that of the Air Navigation Order 2005, SI 2005/1970.

UPDATE

353 Air navigation orders

NOTE 23--SI 2002/798 replaced: Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/354. Air Navigation (General) Regulations 2006.

354. Air Navigation (General) Regulations 2006.

The Air Navigation (General) Regulations 2006¹ have been made in order to supplement the Air Navigation Order 2005² in respect of load sheets and weighing requirements³; aircraft performance⁴; noise and vibration, maintenance and aerodrome facilities⁵; mandatory reporting⁶; and navigation performance and equipment⁷.

- 1 Ie the Air Navigation (General) Regulations 2006, SI 2006/601.
- 2 Ie the Air Navigation Order 2005, SI 2005/1970: see PARA 353.
- 3 See the Air Navigation (General) Regulations 2006, SI 2006/601, regs 4-7; and PARAS 500, 503.
- 4 See the Air Navigation (General) Regulations 2006, SI 2006/601, regs 8-10; and PARA 500.
- 5 See the Air Navigation (General) Regulations 2006, SI 2006/601, regs 11-13; and PARAS 259, 427, 656.
- 6 See the Air Navigation (General) Regulations 2006, SI 2006/601, regs 14-15; and PARAS 582, 585.
- 7 See the Air Navigation (General) Regulations 2006, SI 2006/601, regs 16-19; and PARA 415.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/355. Application of legislation to the Channel Islands and the Isle of Man.

355. Application of legislation to the Channel Islands and the Isle of Man.

Legislation has been enacted for the purpose of extending the Air Navigation Order 2005¹, with certain modifications and adaptations, to the Channel Islands², although not to the Isle of Man³. By a similar process the Air Navigation (General) Regulations 2006⁴ have been modified and adapted so as to apply to the Channel Islands and the Isle of Man⁵. In 1987, the Tynwald enacted the Airports and Civil Aviation Act 1987 (Isle of Man), which gives power to the Isle of Man Department of Highways, Ports and Properties to apply specified United Kingdom legislation to the Isle of Man, and thus replace the present Order in Council with Manx orders⁶.

1 le the Air Navigation Order 2005, SI 2005/1970: see PARA 353.

2 See the Civil Aviation Act 1982 s 108 (amended by the Airports Act 1986 s 83(1), Sch 4 para 8(2); and SI 2001/4050); the Civil Aviation Act 1982 (Jersey) Order 1990, SI 1990/2145 (amended by SI 1998/748); and the Civil Aviation Act 1982 (Guernsey) Order 1992, SI 1992/230 (amended by SI 1992/806). The Air Navigation Order 2005, SI 2005/1970, has been extended to the Channel Islands: see the Air Navigation (Jersey) Order 2000, SI 2000/1346 (amended by SI 2000/3246; and SI 2002/1078); the Air Navigation (Guernsey) Order 1981, SI 1981/1805; and the Interpretation Act 1978 ss 17(2)(a), 23(1), (2).

3 The Air Navigation (Isle of Man) Order 1979, SI 1979/929, was revoked, without being replaced, by the Air Navigation (Isle of Man) (Revocation) Order 1995, SI 1995/1296. No further Order in Council has been made extending the provisions of the Air Navigation Order 2005, SI 2005/1970, to the Isle of Man, but instead, the Civil Aviation (Isle of Man) Order 2007, SI 2007/614, extends the Civil Aviation Act 1982 ss 60, 61 (see PARA 353) to the Isle of Man subject to certain modifications, and the Air Navigation (Isle of Man) Order 2007, SI 2007/1115, makes provision for the Isle of Man corresponding to certain provisions of the Air Navigation Order 2005, SI 2005/1970, relating to the registration, marking, airworthiness, equipment, manning, operation, movement and safety of aircraft and the licensing and welfare of flight crew. See also the text to note 6.

4 le the Air Navigation (General) Regulations 2006, SI 2006/601: see PARA 354.

5 See the Civil Aviation Act 1982 s 108 (as amended: see note 2); the Civil Aviation Act 1982 (Jersey) Order 1990, SI 1990/2145 (amended by SI 1998/748); and the Civil Aviation Act 1982 (Guernsey) Order 1992, SI 1992/230 (amended by SI 1992/806). By virtue of these provisions and the Interpretation Act 1978 ss 17(2)(a), 23(1), (2), the Air Navigation (General) (Guernsey) Regulations 1972, SI 1972/486, the Air Navigation (General) (Jersey) Regulations 1972, SI 1972/487, and the Air Navigation (General) (Isle of Man) Regulations 1979, SI 1979/1184, have effect as if made under the Air Navigation Order 2005, SI 2005/1970.

6 The legislation specified is: the Carriage by Air Act 1961, the Carriage by Air (Supplementary Provisions) Act 1962, the Tokyo Convention Act 1967 (now repealed), the Civil Aviation Act 1982, the Aviation Security Act 1982, and the Airports Act 1986.

UPDATE

355 Application of legislation to the Channel Islands and the Isle of Man

NOTES 2, 5--SI 1990/2145, SI 1992/230 further amended: SI 2009/1307.

NOTE 2--SI 2000/1346 replaced: Air Navigation (Jersey) Order 2008, SI 2008/2562.

NOTE 3--SI 2007/1115 amended: SI 2008/1487.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/356. Application of legislation to dependent territories.

356. Application of legislation to dependent territories.

Provision is made for the regulation of flying in dependent territories by the Air Navigation (Overseas Territories) Order 2007¹, the provisions of which substantially correspond to the provisions of the Air Navigation Order 2005². The Air Navigation (Overseas Territories) Order 2007 applies, unless the contrary intention appears, to or in relation to all aircraft registered in an applicable territory wherever they may be and to other aircraft when they are there³. The power to make regulations for the purpose of the Air Navigation (Overseas Territories) Order 2007 is exercisable by the Governor of the territory⁴.

Provision is also made for the regulation of noise certification and aircraft emissions certification in dependent territories by the Air Navigation (Overseas Territories) (Environmental Standards) Order 2004⁵, the provisions of which substantially correspond to the provisions of the Air Navigation (Environmental Standards) Order 2002⁶.

1 Ie the Air Navigation (Overseas Territories) Order 2007, SI 2007/3468. This order is made under provisions of the Civil Aviation Act 1949 as extended to certain territories by the Civil Aviation Act 1949 (Overseas Territories) Order 1969, SI 1969/592 (amended by SI 2001/1452), and under the powers conferred by the Civil Aviation Act 1982 s 61, as extended to certain territories by the Civil Aviation Act 1982 (Overseas Territories) Order 2001, SI 2001/1452. The provision so made extends to Anguilla, Bermuda, the British Indian Ocean Territory, the Cayman Islands, the Falkland Islands, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena and Dependencies, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia, the Turks and Caicos Islands, and the Virgin Islands: see the Air Navigation (Overseas Territories) Order 2007, SI 2007/3468, art 148, Sch 12. The Air Navigation (Overseas Territories) Order 1989, SI 1989/2395 (amended by SI 1991/189; SI 1991/1697; SI 1992/3198; SI 1995/2701; SI 1997/1746) was repealed but with savings, so that it continued to apply in relation to Gibraltar: see the Air Navigation (Overseas Territories) Order 2001, SI 2001/2128, art 2, Sch 1; but the latter order has now been revoked by the Air Navigation (Overseas Territories) Order 2007, SI 2007/3468, art 2, Sch 1.

2 Ie the Air Navigation Order 2005, SI 2005/1970: see PARA 353.

3 See the Air Navigation (Overseas Territories) Order 2007, SI 2007/3468, art 143.

4 Air Navigation (Overseas Territories) Order 2007, SI 2007/3468, art 149.

5 Ie the Air Navigation (Overseas Territories) (Environmental Standards) Order 2004, SI 2004/3337.

6 Ie the Air Navigation (Environmental Standards) Order 2002, SI 2002/798: see PARA 388 et seq.

UPDATE

356 Application of legislation to dependent territories

NOTE 1--SI 2007/3468 amended: SI 2008/3125.

TEXT AND NOTE 6--SI 2002/798 replaced: Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/357. Rules of the Air.

357. Rules of the Air.

The Secretary of State¹ may make regulations (commonly referred to as the 'Rules of the Air')² prescribing the manner in which aircraft may move or fly³, the lights and other signals to be shown or made by aircraft or persons⁴, the lighting and marking of aerodromes⁵, and any other provisions for securing the safety of aircraft in flight and in movement and the safety of persons and property on the surface⁶.

It is an offence to contravene the Rules of the Air, to permit the contravention of them, or to fail to comply with them⁷.

The Rules of the Air may, however, be departed from to the extent necessary for avoiding immediate danger⁸, in which case the commander⁹ of the aircraft must cause written particulars of the departure and of the circumstances giving rise to it to be given within ten days to the competent authority¹⁰ of the country in whose territory the departure was made or, if the departure was made over the high seas, to the Civil Aviation Authority ('CAA')¹¹. Departure from the Rules of the Air is also lawful to the extent necessary for (1) complying with the law of any country other than the United Kingdom¹² within which the aircraft then is¹³; or (2) complying with military flying regulations or flying orders to contractors issued by the Secretary of State in relation to an aircraft of which the commander is acting as such in the course of his duty as a member of any of Her Majesty's naval, military or air forces¹⁴.

Nothing in the Rules of the Air exonerates any person from the consequences of any neglect in the use of lights or signals¹⁵, or of the neglect of any precautions required by ordinary aviation practice or by special circumstances¹⁶.

1 As to the Secretary of State see PARA 33.

2 See the Rules of the Air Regulations 2007, SI 2007/734 (amended by SI 2007/1371).

3 See PARAS 524-570.

4 See PARAS 571-573.

5 See PARA 302. As to the meaning of 'aerodrome' see PARA 175.

6 Air Navigation Order 2005, SI 2005/1970, art 95(1).

7 Air Navigation Order 2005, SI 2005/1970, art 95(2). A person contravening art 95 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

8 Air Navigation Order 2005, SI 2005/1970, art 95(3)(a).

9 As to the meaning of 'commander' see PARA 456.

10 As to the meaning of 'competent authority' see PARA 415 note 9.

11 Air Navigation Order 2005, SI 2005/1970, art 95(4). For the penalty for contravention of this provision see note 1. As to the CAA see PARA 50 et seq.

12 As to the meaning of 'United Kingdom' see PARA 30 note 1.

13 Air Navigation Order 2005, SI 2005/1970, art 95(3)(b).

14 Air Navigation Order 2005, SI 2005/1970, art 95(3)(c).

15 See PARAS 571-573.

16 Air Navigation Order 2005, SI 2005/1970, art 95(5).

UPDATE

357 Rules of the Air

NOTE 2--SI 2007/734 further amended: SI 2009/2169.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/358. Aircraft nationality.

358. Aircraft nationality.

Under the Chicago Convention¹ aircraft have the nationality of the state in which they are registered², and, while the registration may be changed from one state to another, no aircraft can validly be registered in more than one state³. Further, every aircraft engaged in international air navigation must bear its appropriate nationality and registration marks⁴.

1 The Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742): see PARA 2 et seq.

2 Chicago Convention art 17.

3 Chicago Convention art 18. No aircraft may be registered in the United Kingdom if it is already registered elsewhere: see the Air Navigation Order 2005, SI 2005/1970, art 4(2)(a); and PARA 368.

4 Chicago Convention art 20. As to nationality and registration marks on United Kingdom aircraft see PARA 374.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/359. Military aircraft.

359. Military aircraft.

The Air Navigation Order 2005¹ does not, with certain exceptions², apply to military aircraft³. Where a military aircraft is flown by a civilian pilot and is not commanded by a person acting in the course of his duty as a member of any of Her Majesty's naval, military or air forces or as a member of a visiting force⁴ or international headquarters⁵, certain safety provisions of the Air Navigation Order 2005⁶ apply on the occasion of that flight⁷.

1 Ie the Air Navigation Order 2005, SI 2005/1970: see PARA 353.

2 See the Air Navigation Order 2005, SI 2005/1970, art 80(5), (12) (flying displays: see PARA 545), art 81(3) (flight time requirements: see PARA 464), art 95(1)(a) (power to make rules of the air requiring aircraft to give way to military aircraft), art 131 (noise and vibration: see PARA 259), art 152(6) (application to Crown and visiting forces: see the text and notes 4-7).

3 See the Air Navigation Order 2005, SI 2005/1970, art 152(5). As to the meaning of 'military aircraft' see PARA 31 note 5.

4 As to the meaning of 'visiting force' see PARA 31 note 6.

5 As to the meaning of 'international headquarters' see PARA 31 note 7.

6 Ie the Air Navigation Order 2005, SI 2005/1970, arts 73-75 (endangering safety of aircraft, person or property; drunkenness: see PARAS 524-525), art 96 (prohibiting or restricting flying: see PARA 574) and, so far as applicable, art 95 (rules of the air: see PARA 357) unless the aircraft is flown in compliance with Military Flying Regulations (Joint Service Publication 550) or Flying Orders to Contractors (Aviation Publication 67) issued by the Secretary of State. As to the Secretary of State see PARA 33.

7 Air Navigation Order 2005, SI 2005/1970, art 152(6).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/360. Classification of aircraft.

360. Classification of aircraft.

The term 'aircraft' is not defined in the Civil Aviation Act 1982 or the Air Navigation Order 2005¹, but the latter contains a table setting out a general classification of aircraft², where certain expressions are defined³. According to this classification, aircraft are either lighter than air aircraft or heavier than air aircraft⁴. 'Lighter than air aircraft' include non-power driven aircraft (that is, free and captive balloons⁵) and power driven aircraft (that is, airships); 'heavier than air aircraft' include non-power driven aircraft (that is, gliders⁶ and kites) and power driven aircraft or flying machines (that is, aeroplanes (including landplanes, seaplanes⁷, amphibian aeroplanes or self-launching motor gliders), powered lift (tilt rotor), and rotorcraft (including gyroplanes and helicopters))⁸.

1 Ie the Air Navigation Order 2005, SI 2005/1970: see PARA 353.

2 See the Air Navigation Order 2005, SI 2005/1970, Sch 2 Pt A.

3 See the Air Navigation Order 2005, SI 2005/1970, art 155(6).

4 Air Navigation Order 2005, SI 2005/1970, Sch 2 Pt A.

5 'Free balloon' means a balloon which when in flight is not attached by any form of restraining device to the surface; and 'captive balloon' means a balloon which when in flight is attached by a restraining device to the surface: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'flight' see PARA 530.

6 'Glider' means (1) a non-power-driven heavier-than-air aircraft, deriving its lift in flight chiefly from aerodynamic reactions on surfaces which remain fixed under given conditions of flight; (2) a self-sustaining glider; and (3) a self-propelled hang-glider; and a reference in the Air Navigation Order 2005, SI 2005/1970, to a glider includes a reference to a self-sustaining glider and a self-propelled hang-glider: art 155(1). As to the meaning of 'self-sustaining glider' see PARA 535 note 5.

7 As to the meaning of 'seaplane' see PARA 308 note 3; definition applied by the Air Navigation Order 2005, SI 2005/1970, art 155(1).

8 Air Navigation Order 2005, SI 2005/1970, Sch 2 Pt A. As to the meaning of 'flying machine' see PARA 303 note 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/361. Hovercraft.

361. Hovercraft.

A hovercraft is a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle¹. A hovercraft is not to be treated as an aircraft except as otherwise provided².

1 Hovercraft Act 1968 s 4(1). See also the Hovercraft (General) Order 1972, SI 1972/674; and **SHIPPING AND MARITIME LAW** vol 93 (2008) PARAS 381-385.

2 See generally the Hovercraft Act 1968 ss 1(1)(h), 4(3); the Civil Aviation Act 1982 s 100; the Hovercraft (Application of Enactments) Order 1972, SI 1972/971; and **SHIPPING AND MARITIME LAW**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/362. Categories of flight.

362. Categories of flight.

For the purposes of the Air Navigation Order 2005¹, flights are categorised according to their purpose. In particular, certificates of airworthiness² specify which categories of flight an aircraft may undertake³. There are two categories: (1) aircraft falling in the standard category may fly for any purpose; (2) aircraft falling in the special category may fly for any purpose, other than public transport⁴, specified in the certificate of airworthiness but not including the carriage of passengers⁵ unless expressly permitted⁶.

1 Ie the Air Navigation Order 2005, SI 2005/1970: see PARA 353.

2 As to certificates of airworthiness see PARA 376 et seq.

3 See the Air Navigation Order 2005, SI 2005/1970, art 9(3).

4 As to public transport see PARA 363.

5 'Passenger' means a person other than a member of the crew: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'crew' see PARA 456.

6 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt B.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/363. Public transport.

363. Public transport.

'Public transport aircraft' means an aircraft flying, or intended by the operator of the aircraft to fly, for the purpose of public transport¹. An aircraft in flight² is deemed to fly for the purposes of public transport (1) if valuable consideration³ is given or promised for the carriage of passengers⁴ or cargo⁵ in the aircraft on that flight⁶; (2) if any passengers or cargo are carried gratuitously on that flight by an air transport undertaking⁷; or (3) if, for the purposes of the provisions relating to airworthiness and equipment⁸, valuable consideration is given or promised for the primary purpose of conferring on a particular person the right to fly the aircraft on that flight otherwise than under a hire-purchase or conditional sale agreement⁹.

An aircraft registered outside the United Kingdom¹⁰ may not take on board or discharge passengers or cargo in the United Kingdom where valuable consideration is given or promised for the carriage of such passengers or cargo except with the permission of the Secretary of State¹¹ granted to the operator¹² or charterer of the aircraft or to the government of the country in which the aircraft is registered, and in accordance with any condition to which the permission may be subject¹³.

Where under a transaction between a member of an association of persons and that association (or any of its members) a person is carried in, or is given the right to fly, an aircraft in such circumstances that valuable consideration would be given or promised if the transaction were effected in any other way, then valuable consideration is deemed to have been given or promised for the purposes of the Air Navigation Order 2005¹⁴.

1 Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the operator of an aircraft see PARA 437.

2 As to the meaning of 'flight' see PARA 530.

3 'Valuable consideration' means any right, interest, profit or benefit, forbearance, detriment, loss or responsibility accruing, given, suffered or undertaken pursuant to an agreement, which is of more than a nominal nature: Air Navigation Order 2005, SI 2005/1970, art 155(1).

4 As to the meaning of 'passenger' see PARA 362 note 5.

5 'Cargo' includes mail and animals: Air Navigation Order 2005, SI 2005/1970, art 155(1).

6 Air Navigation Order 2005, SI 2005/1970, art 157(3)(a). For the purposes of art 157(3)(a), any valuable consideration must be disregarded if it is given or promised in respect of a flight or the purpose of a flight by one company to another company which is its holding company, its subsidiary, or another subsidiary of the same holding company: art 157(8)(a). As to the meanings of 'holding company' and 'subsidiary' see the Companies Act 1985 s 736 (see **COMPANIES** vol 14 (2009) PARA 25); definition applied by the Air Navigation Order 2005, SI 2005/1970, art 157(8)(b).

7 See the Air Navigation Order 2005, SI 2005/1970, art 157(3)(b). 'Air transport undertaking' means an undertaking whose business includes the undertaking of flights for the purposes of public transport of passengers or cargo: art 155(1).

Article 157(3)(b) does not apply to the employees of the undertaking or, if a body corporate, to the directors of that body (including the members of the Civil Aviation Authority ('CAA')) or persons authorised by the CAA making an inspection or witnessing any training, practice or test for the purposes of the Air Navigation Order 2005, SI 2005/1970, nor does the provision apply to cargo intended to be used by such passengers or by such an undertaking: art 157(3)(b). As to the CAA see PARA 50 et seq.

8 See the Air Navigation Order 2005, SI 2005/1970, Pt III (arts 8-19) (other than arts 14(2), 15(2)); and PARA 376 et seq.

9 Air Navigation Order 2005, SI 2005/1970, art 157(3)(c). As to the meanings of 'hire-purchase agreement' and 'conditional sale agreement' see the Consumer Credit Act 1974 s 189(1) (see **CONSUMER CREDIT** vol 9(1) (Reissue) PARAS 93, 95); definition applied by the Air Navigation Order 2005, SI 2005/1970, art 155(1). This provision does not apply to a single-seat aircraft of which the maximum total authorised weight does not exceed 910 kg; art 157(3)(c). In relation to an aircraft, 'maximum total weight authorised' means the maximum total weight of the aircraft and its contents at which the aircraft may take off anywhere in the world, in the most favourable circumstances in accordance with the certificate of airworthiness in force in respect of the aircraft: art 155(1). Notwithstanding that an aircraft may be flying for the purpose of public transport by reason of art 157(3)(c), it is not deemed to be flying for the purpose of the public transport of passengers unless valuable consideration is given or promised for the carriage of those passengers (art 157(4)); nor is a glider deemed to be flying for the purpose of public transport if the valuable consideration given or promised for the primary purpose of conferring on a particular person the right to fly the glider on that flight is given or promised by a member of a flying club and the glider is owned or operated by that flying club (art 157(5)). Notwithstanding the giving or promising of valuable consideration specified in art 157(3)(c) in respect of the flight or the purpose of the flight it is, for all purposes other than the Air Navigation Order 2005, SI 2005/1970, Pt 3 (arts 8-24) (see PARA 376 et seq) and for the purposes of art 19(2) (equipment required to be provided in aircraft: see PARA 410) and art 20(2) (radio equipment required in aircraft: see PARA 416), deemed to be a private flight: art 157(6). As to charter flights see PARAS 433-435. As to the meaning of 'glider' see PARA 360 note 6.

10 The aircraft may be registered in a state which is a party to the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) (see PARA 2) or in any other foreign state: see the Air Navigation Order 2005, SI 2005/1970, art 138(1). As to the meaning of 'United Kingdom' see PARA 30 note 1.

11 As to the Secretary of State see PARA 33.

12 As to the meaning of 'operator' see PARA 437.

13 See the Air Navigation Order 2005, SI 2005/1970, art 138(1). A permission so granted may contain a tariff provision: see art 139. Permission is not required where the aircraft is exercising traffic rights permitted by EC Council Regulation 2408/92 (OJ L240, 24.8.92, p 8) on access for Community air carriers to intra-Community air routes (see PARA 98 et seq): Air Navigation Order 2005, SI 2005/1970, art 138(1)(b). Without prejudice to art 93 (revocation, variation etc of permissions: see PARA 491) or art 138(1), any breach by a person to whom a permission was granted of a condition to which that permission was subject is a contravention of art 138: art 138(2). A person who contravenes these provisions is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12. As to the Secretary of State's power to prevent flight in contravention of these provisions see PARA 528.

14 Air Navigation Order 2005, SI 2005/1970, art 157(7).

UPDATE

363 Public transport

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTE 13--SI 2005/1970 art 138(1)(b) amended: SI 2009/41.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/364. Aerial work.

364. Aerial work.

'Aerial work' is any purpose, other than public transport¹, for which an aircraft is flown if valuable consideration² is given or promised in respect of the flight or the purpose of the flight³. An 'aerial work aircraft' is an aircraft, other than a public transport aircraft⁴, flying or intended by the operator to fly for the purpose of aerial work⁵. 'Aerial work undertaking' means an undertaking whose business includes the performance of aerial work⁶.

Where, despite valuable consideration being given for the carriage of passengers, a flight is for the purpose of dropping persons by parachute in accordance with any written permission of the Civil Aviation Authority ('CAA')⁷ (including the positioning and return of the aircraft for such purposes), the flight is deemed to be for the purposes of aerial work⁸.

1 As to public transport see PARA 363.

2 As to the meaning of 'valuable consideration' see PARA 363 note 3. If the only valuable consideration is remuneration for the services of the pilot, then for the purposes of the Air Navigation Order 2005, SI 2005/1970, Pt 3 (arts 8-24) (see PARA 376 et seq), the flight is deemed to be a private flight: art 157(2). As to private flight see PARA 365.

3 Air Navigation Order 2005, SI 2005/1970, arts 155(1), 157(1).

4 As to the meaning of 'public transport aircraft' see PARA 363.

5 Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'flight' see PARA 530.

6 Air Navigation Order 2005, SI 2005/1970, art 155(1).

7 As to the CAA see PARA 50 et seq.

8 See the Air Navigation Order 2005, SI 2005/1970, art 163.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(1) INTRODUCTION/365. Private flight.

365. Private flight.

An aircraft is on a private flight when the flight is undertaken neither for the purpose of public transport nor for the purpose of aerial work¹. In addition, the Air Navigation Order 2005² specifies five types of flight which, despite the giving of valuable consideration³, are deemed to be private flights for certain purposes, subject to conditions which they must fulfil:

- 257 (1) where the flight⁴ is wholly or principally for the purpose of taking part in an aircraft race, contest or flying display⁵, for the purpose of positioning the aircraft for such a flight or returning after such a flight, the flight is a private flight for the purposes of aircraft crew and licensing provisions⁶, provided that any valuable consideration covers only the direct costs⁷ of the flight and a proportion of the annual costs⁸ and one or more prizes awarded to the pilot in command of an aircraft taking part in an aircraft race or contest to a value not exceeding £500 in respect of any one race or contest except with the permission of the Civil Aviation Authority ('CAA') granted to the organiser of the race or contest⁹;
- 258 (2) where the only valuable consideration in respect of a flight is given or promised to a registered charity which is not the operator of the aircraft, the flight is a private flight, provided that it is in accordance with the written permission of the CAA¹⁰;
- 259 (3) where an aircraft carries no more than four persons including the pilot, and the only valuable consideration is a shared contribution to the direct costs of the flight, the flight is a private flight, provided that it has not been advertised and the pilot is not employed or hired by the aircraft operator¹¹;
- 260 (4) where the only valuable consideration is the payment of the whole or part of the direct costs, otherwise payable by the pilot in command¹², by his employer or a body corporate of which he is a director¹³, the flight is a private flight, provided that neither the pilot nor any person in the aircraft was legally obliged to be carried¹⁴;
- 261 (5) where an aircraft jointly owned and registered by a number of persons, each of whom is a natural person, or by a company of which they are members, is in flight, the flight is a private flight, provided that the only valuable consideration is for the direct costs of the flight or in respect of the annual costs, paid by one or more of the joint owners or registered shareholders¹⁵.

1 See the Air Navigation Order 2005, SI 2005/1970, art 155(1). As to public transport see PARA 363; and as to aerial work see PARA 364.

2 I.e. the Air Navigation Order 2005, SI 2005/1970: see PARA 353.

3 As to the meaning of 'valuable consideration' see PARA 363 note 3. For the purposes of the Air Navigation Order 2005, SI 2005/1970, arts 158-161, any valuable consideration specified as allowable also includes that specified by art 157(3)(c) (public transport: see PARA 363) or art 162(3) (jointly-owned aircraft: see head (5) in the text) where the aircraft is owned in accordance with art 162(2) (see note 15): see art 158(1)(b).

4 As to the meaning of 'flight' see PARA 530.

5 'Flying display' means any flying activity deliberately performed for the purpose of providing an exhibition or entertainment at an advertised event open to the public: Air Navigation Order 2005, SI 2005/1970, art 155(1).

6 I.e. the Air Navigation Order 2005, SI 2005/1970, Pt 4 (arts 25-37): see PARA 438 et seq.

7 'Direct costs' means, in respect of a flight, the cost actually and necessarily incurred in connection with that flight without a view to profit but excluding any remuneration payable to the pilot for his services as such: Air Navigation Order 2005, SI 2005/1970, art 155(1).

8 See the Air Navigation Order 2005, SI 2005/1970, art 158(1), (2)(a). 'Annual costs', in relation to the operation of an aircraft, means the best estimate reasonably practicable at the time of a particular flight in respect of the year commencing on the first day of January preceding the date of the flight, of the costs of keeping and maintaining and the indirect costs of operating the aircraft, such costs in either case excluding direct costs and being those actually and necessarily incurred without a view to profit: art 155(1).

9 See the Air Navigation Order 2005, SI 2005/1970, art 158(2)(b). Any such prize is deemed not to constitute remuneration for services as a pilot: art 158(3). As to the CAA see PARA 50 et seq.

10 See the Air Navigation Order 2005, SI 2005/1970, art 159. As to the registration of charities see **CHARITIES** vol 8 (2010) PARA 304 et seq.

11 See the Air Navigation Order 2005, SI 2005/1970, art 160.

12 As to command of an aircraft see PARA 456.

13 As to the meaning of 'director' see the Companies Act 1989 s 53(1); definition applied by the Air Navigation Order 2005, SI 2005/1970, art 155(1).

14 See the Air Navigation Order 2005, SI 2005/1970, art 161.

15 See the Air Navigation Order 2005, SI 2005/1970, art 162. Each person must hold at least a 5% beneficial share in the aircraft which is registered in either the names of all the joint owners or in the name of one or more of the joint owners as trustee or trustees for all the joint owners: see art 162(2)(a). Each shareholder must be a natural person and hold at least 5% of the shares in the company, and the aircraft must be registered in the name of the company: art 162(2)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(2) MANUFACTURE, REGISTRATION AND MARKING OF AIRCRAFT/366. Liabilities of aircraft manufacturers.

(2) MANUFACTURE, REGISTRATION AND MARKING OF AIRCRAFT

366. Liabilities of aircraft manufacturers.

A manufacturer of aircraft may be liable to a purchaser in respect of the faulty design or construction of an aircraft, by reference to the terms of the contract between them and the ordinary law relating, for example, to the sale of goods¹.

In addition, the manufacturer is strictly liable if death or personal injury or, subject to certain qualifications, loss of or damage to any property (including land) is caused wholly or partly by a defect in the product (including a component part of another product)².

An employer is liable in negligence where an employee suffers personal injury, death or disease in the course of his employment in consequence of a defect in an aircraft provided by his employer for the purposes of the employer's business, but without prejudice to the law relating to contributory negligence³.

1 See generally **CONTRACT; DAMAGES; NEGLIGENCE; SALE OF GOODS AND SUPPLY OF SERVICES**.

2 See the Consumer Protection Act 1987 Pt I (ss 1-9); and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 518 et seq.

3 See the Employer's Liability (Defective Equipment) Act 1969 s 1(1)(a); *Coltman v Bibby Tankers Ltd, The Derbyshire* [1988] AC 276, [1987] 3 All ER 1068, HL; and **TORT** vol 97 (2010) PARA 675.

UPDATE

366 Liabilities of aircraft manufacturers

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(2) MANUFACTURE, REGISTRATION AND MARKING OF AIRCRAFT/367. Necessity for registration.

367. Necessity for registration.

No aircraft may fly in or over the United Kingdom¹ unless it is registered² in some part of the Commonwealth³, in a contracting state⁴, or in some other country in relation to which there is in force an agreement between Her Majesty's government in the United Kingdom and the government of that country which makes provision for the flight over the United Kingdom of aircraft registered in that country⁵. However, a non-EASA⁶ glider may fly unregistered in specified circumstances⁷, and any non-EASA aircraft may fly unregistered on a flight beginning and ending in the United Kingdom without passing over any other country and which is in accordance with certain conditions⁸. Non-EASA kites and captive balloons do not need to be registered⁹.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 As to the registration of aircraft see further PARA 368 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 3(1)(a). 'Commonwealth' means the United Kingdom, the Channel Islands, the Isle of Man, the countries mentioned in the British Nationality Act 1981 Sch 3 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 11), and all other territories forming part of Her Majesty's dominions or in which Her Majesty has jurisdiction: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to Her Majesty's dominions see **COMMONWEALTH** vol 13 (2009) PARA 707.

Contravention of art 3(1) is an offence: see art 3(5); and PARA 353.

4 Air Navigation Order 2005, SI 2005/1970, art 3(1)(b). See note 3. 'Contracting state' means any state (including the United Kingdom) which is party to the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) (see PARA 2 et seq): see the Air Navigation Order 2005, SI 2005/1970, art 155(1).

5 Air Navigation Order 2005, SI 2005/1970, art 3(1)(c). See note 3. Contravention of this provision is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale: see art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

As to the power to direct that an unregistered aircraft must not be flown see art 144(1); and PARA 528.

6 As to the meaning of 'non-EASA aircraft' see PARA 375 note 4. As to the meaning of 'glider' see PARA 360 note 6.

7 See the Air Navigation Order 2005, SI 2005/1970, art 3(2). A glider is deemed to be registered in the United Kingdom for the purposes of art 19 (equipment: see PARA 410), art 20 (radio equipment: see PARA 416), art 26 (flight crew licences: see PARA 439) and art 52 (pre-flight action: see PARA 494), on any flight wholly within the United Kingdom which is not for the purpose of public transport (see PARA 363) or (with certain exceptions) aerial work (see PARA 364): see art 3(2)(a).

8 See the Air Navigation Order 2005, SI 2005/1970, art 3(3). The conditions referred to are the 'B' conditions set out in Sch 3 Pt A: see PARA 379.

9 See the Air Navigation Order 2005, SI 2005/1970, art 3(4). As to the meaning of 'captive balloon' see PARA 360 note 5.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(2) MANUFACTURE, REGISTRATION AND MARKING OF AIRCRAFT/368. Eligibility of aircraft for registration.

368. Eligibility of aircraft for registration.

No aircraft may be registered¹ or continue to be registered in the United Kingdom² if it appears to the Civil Aviation Authority ('CAA')³ that it is already registered outside the United Kingdom⁴, or that it could more suitably be registered in some other part of the Commonwealth⁵, or that it would be inexpedient in the public interest for it to be or continue to be registered in the United Kingdom⁶. Further, no aircraft may be so registered if it appears to the CAA that an unqualified person holds any legal or beneficial interest by way of ownership in the aircraft or any share in it⁷; if, however, the holder of the interest resides or has a place of business in the United Kingdom, the CAA may register the aircraft if it is satisfied that the aircraft may otherwise be properly registered⁸.

The persons qualified to hold a legal or beneficial interest by way of ownership in a United Kingdom-registered aircraft or a share in it are:

- 262 (1) the Crown in right of Her Majesty's government in the United Kingdom⁹;
- 263 (2) Commonwealth citizens¹⁰;
- 264 (3) nationals of any EEA state¹¹;
- 265 (4) British protected persons¹²;
- 266 (5) bodies incorporated in some part of, and having their principal place of business in any part of, the Commonwealth¹³;
- 267 (6) undertakings formed in accordance with the law of an EEA state and having their registered office, central administration or principal place of business within the European Economic Area¹⁴; or
- 268 (7) firms¹⁵ carrying on business in Scotland¹⁶.
- 269 If an aircraft is chartered by demise to a qualified person¹⁷, the CAA may register the aircraft in the charterer's name if satisfied that the aircraft may otherwise be properly so registered¹⁸.

1 As to the requirement for registration see PARA 367.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 As to the CAA see PARA 50 et seq. The CAA is the authority for the registration of aircraft in the United Kingdom, and is responsible for maintaining the register: see the Air Navigation Order 2005, SI 2005/1970, art 4(1).

4 Air Navigation Order 2005, SI 2005/1970, art 4(2)(a).

5 Air Navigation Order 2005, SI 2005/1970, art 4(2)(c). As to the meaning of 'Commonwealth' see PARA 367 note 3.

6 Air Navigation Order 2005, SI 2005/1970, art 4(2)(d).

7 Air Navigation Order 2005, SI 2005/1970, art 4(2)(b). Reference to an interest in an aircraft does not include reference to an interest in an aircraft to which a person is entitled only by virtue of his membership of a flying club: see art 4(15). 'Beneficial interest' includes interests arising under contract and other equitable interests: art 155(1).

8 See the Air Navigation Order 2005, SI 2005/1970, art 4(4)(a). The holder of the interest must not cause or permit the aircraft, while it is registered in pursuance of art 4(4), to be used for the purpose of public transport (see PARA 363) or aerial work (see PARA 364): art 4(4)(b).

- 9 Air Navigation Order 2005, SI 2005/1970, art 4(3)(a).
- 10 Air Navigation Order 2005, SI 2005/1970, art 4(3)(b). As to Commonwealth citizens see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 11.
- 11 Air Navigation Order 2005, SI 2005/1970, art 4(3)(c).
- 12 Air Navigation Order 2005, SI 2005/1970, art 4(3)(d). As to British protected persons see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 10, 72-76.
- 13 Air Navigation Order 2005, SI 2005/1970, art 4(3)(e).
- 14 Air Navigation Order 2005, SI 2005/1970, art 4(3)(f).
- 15 As to the meaning of 'firm' see the Partnership Act 1890 s 4(1) (see **PARTNERSHIP** vol 79 (2008) PARA 1); definition applied by the Air Navigation Order 2005, SI 2005/1970, art 4(3)(g).
- 16 Air Navigation Order 2005, SI 2005/1970, art 4(3)(g).
- 17 As to the persons who may be qualified see the text and notes 9-16.
- 18 See the Air Navigation Order 2005, SI 2005/1970, art 4(5). This provision applies whether or not an unqualified person is also entitled as owner to a legal or beneficial interest in the aircraft: see art 4(5). Subject to the provisions of art 4, the aircraft may remain registered in the charterer's name during the continuation of the charter: art 4(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(2) MANUFACTURE, REGISTRATION AND MARKING OF AIRCRAFT/369. Application for registration of aircraft.

369. Application for registration of aircraft.

Application for the registration¹ of an aircraft must be made to the Civil Aviation Authority ('CAA')² in writing, and must include or be accompanied by such particulars and evidence relating to the aircraft³ and its ownership and chartering as the CAA requires to enable it to determine whether the aircraft may properly be registered in the United Kingdom⁴ and to issue the registration certificate⁵.

1 As to the requirement for registration see PARA 367.

2 As to the CAA see PARA 50 et seq. The CAA is the authority for the registration of aircraft in the United Kingdom, and is responsible for maintaining the register: see the Air Navigation Order 2005, SI 2005/1970, art 4(1).

3 The application must include the proper description of the aircraft according to the general classification of aircraft (see the Air Navigation Order 2005, SI 2005/1970, Sch 2 Pt A; and PARA 360): art 4(6).

4 As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 See the Air Navigation Order 2005, SI 2005/1970, art 4(6). As to the registration certificate see PARA 370.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(2) MANUFACTURE, REGISTRATION AND MARKING OF AIRCRAFT/370. The registration certificate.

370. The registration certificate.

When satisfied upon receiving an application for registration¹ that an aircraft may properly be registered, the Civil Aviation Authority ('CAA')² must register it, wherever it may be³, and must include in the register:

- 270 (1) the number of the registration certificate⁴;
- 271 (2) the nationality mark of the aircraft, and the registration mark assigned to it by the CAA⁵;
- 272 (3) the name of the constructor of the aircraft and its designation⁶;
- 273 (4) the aircraft's serial number⁷; and
- 274 (5) the name and address of each person entitled as owner to a legal interest or share in the aircraft or of the charterer by demise⁸; and
- 275 (6) if it be the case, an indication that the aircraft is registered in special circumstances⁹.
- 276 The CAA must furnish to the person in whose name the aircraft is registered a certificate of registration including the above particulars entered in the register and the date of issue¹⁰.

1 As to the requirement for registration see PARA 367.

2 As to the CAA see PARA 50 et seq. The CAA is the authority for the registration of aircraft in the United Kingdom, and is responsible for maintaining the register: see the Air Navigation Order 2005, SI 2005/1970, art 4(1).

3 Air Navigation Order 2005, SI 2005/1970, art 4(7).

4 Air Navigation Order 2005, SI 2005/1970, art 4(7)(a).

5 Air Navigation Order 2005, SI 2005/1970, art 4(7)(b). As to nationality and registration marks see PARA 374.

6 Air Navigation Order 2005, SI 2005/1970, art 4(7)(c).

7 Air Navigation Order 2005, SI 2005/1970, art 4(7)(d).

8 Air Navigation Order 2005, SI 2005/1970, art 4(7)(e). See PARA 368.

9 See the Air Navigation Order 2005, SI 2005/1970, art 4(7)(f). As to these special circumstances see art 4(4), (5); and PARA 368.

10 See the Air Navigation Order 2005, SI 2005/1970, art 4(8)(a). There is an exception relating to the holder of an aircraft dealer's certificate: see art 4(8)(b); and PARA 371.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(2) MANUFACTURE, REGISTRATION AND MARKING OF AIRCRAFT/371. Aircraft dealer's certificate.

371. Aircraft dealer's certificate.

The Civil Aviation Authority ('CAA')¹ may grant to any qualified person² an aircraft dealer's certificate if it is satisfied that he has a place of business in the United Kingdom³ for buying and selling aircraft⁴. The CAA is not required to furnish a registration certificate⁵ to the holder of an aircraft dealer's certificate who has made to the CAA a statement that a particular aircraft is to fly only in accordance with special conditions⁶.

1 As to the CAA see PARA 50 et seq. The CAA is the authority for the registration of aircraft in the United Kingdom, and is responsible for maintaining the register: see the Air Navigation Order 2005, SI 2005/1970, art 4(1).

2 As to the persons qualified to hold a legal or beneficial interest by way of ownership in a United Kingdom-registered aircraft see the Air Navigation Order 2005, SI 2005/1970, art 4(3); and PARA 368.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 Air Navigation Order 2005, SI 2005/1970, art 4(9).

5 As to registration certificates see PARA 370. As to the requirement for registration see PARA 367.

6 Air Navigation Order 2005, SI 2005/1970, art 4(8)(b). As to the conditions see Sch 2 Pt C (an operator holding an aircraft dealer's certificate may fly an aircraft in the United Kingdom only for the purpose of testing, demonstration with a view to sale, and delivery, etc).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(2) MANUFACTURE, REGISTRATION AND MARKING OF AIRCRAFT/372. Notice of change of circumstances.

372. Notice of change of circumstances.

The registered owner¹ of an aircraft registered in the United Kingdom² must forthwith inform the Civil Aviation Authority ('CAA')³ in writing of any change in the particulars furnished on the application for registration⁴, of the destruction of the aircraft or its permanent withdrawal from use and, if it was registered in the name of a charterer by demise, of the termination of the charter⁵. Any person who becomes the owner of an aircraft registered in the United Kingdom must inform the CAA in writing to that effect within 28 days⁶.

1 'Registered owner' means the person in whose name the aircraft is registered: Air Navigation Order 2005, SI 2005/1970, art 4(8)(a). As to the requirement for registration see PARA 367. Reference to the registered owner in art 4(11) includes, in the case of a deceased person, his legal personal representative and, in the case of a body corporate which has been dissolved, its successor: art 4(15).

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 As to the CAA see PARA 50 et seq. The CAA is the authority for the registration of aircraft in the United Kingdom, and is responsible for maintaining the register: see the Air Navigation Order 2005, SI 2005/1970, art 4(1).

4 As to the application for registration see PARA 369.

5 Air Navigation Order 2005, SI 2005/1970, art 4(11). As to charters see PARA 368.

6 Air Navigation Order 2005, SI 2005/1970, art 4(12).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(2) MANUFACTURE, REGISTRATION AND MARKING OF AIRCRAFT/373. Amendment, cancellation and nullity of registration.

373. Amendment, cancellation and nullity of registration.

The Civil Aviation Authority ('CAA')¹ may amend the register² whenever it appears necessary or appropriate to do so for giving effect to the provisions relating to the registration and marking of aircraft³ or for bringing up to date or correcting the particulars on the register⁴. It may also, if it thinks fit, cancel the registration of an aircraft, and must do so within two months of being satisfied that there has been a change in ownership⁵. Nothing, however, requires the CAA to cancel a registration if in its opinion it would be inexpedient in the public interest to do so⁶.

Where, after an aircraft has been registered in the United Kingdom⁷, an unqualified person⁸ becomes entitled to a legal or beneficial interest⁹ by way of ownership or a share in the aircraft, the registration becomes void and the registered owner¹⁰ must forthwith return the registration certificate to the CAA¹¹.

1 As to the CAA see PARA 50 et seq. The CAA is the authority for the registration of aircraft in the United Kingdom, and is responsible for maintaining the register: see the Air Navigation Order 2005, SI 2005/1970, art 4(1). As to the requirement for registration see PARA 367.

2 As to the register see PARA 370.

3 Ie the Air Navigation Order 2005, SI 2005/1970, Pt 1 (arts 3-5).

4 Air Navigation Order 2005, SI 2005/1970, art 4(13).

5 See the Air Navigation Order 2005, SI 2005/1970, art 4(13). The registration of an aircraft which is the subject of an undischarged registered mortgage cannot be cancelled unless all persons shown in the register as mortgagees consent to the cancellation: see art 4(17). As to the mortgage of aircraft see the Civil Aviation Act 1982 s 86; and PARA 431. Note that the Secretary of State is empowered to adapt or modify the provisions of the Air Navigation Order 2005, SI 2005/1970, art 4(1)-(13) (see PARA 368 et seq) if he deems it necessary or expedient for the purpose of providing for the temporary transfer of an aircraft to or from the United Kingdom register, either generally or in relation to a particular case or class of cases: art 4(14).

6 Air Navigation Order 2005, SI 2005/1970, art 4(16).

7 As to the meaning of 'United Kingdom' see PARA 30 note 1.

8 As to the persons qualified to hold a legal or beneficial interest by way of ownership in a United Kingdom-registered aircraft see the Air Navigation Order 2005, SI 2005/1970, art 4(3); and PARA 368.

9 As to the meaning of 'beneficial interest' see PARA 368 note 7.

10 As to the meaning of 'registered owner' see PARA 372 note 1.

11 Air Navigation Order 2005, SI 2005/1970, art 4(10). This is subject to art 4(4), (5): see PARA 368. The registration of an aircraft which is the subject of an undischarged registered mortgage does not become void by virtue of this provision: see art 4(17).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(2) MANUFACTURE, REGISTRATION AND MARKING OF AIRCRAFT/374. Nationality and registration marks.

374. Nationality and registration marks.

An aircraft, other than one permitted to fly without being registered¹, may not fly unless it bears painted on it or affixed to it, in the manner required by the law of the country in which it is registered, the nationality and registration marks required by that law². Further, an aircraft must not bear any marks purporting to indicate:

- 277 (1) that it is registered in a country in which it is not registered³; or
- 278 (2) that it is a state aircraft of a particular country if it is not such an aircraft, unless the appropriate authority of that country has sanctioned the bearing of such marks⁴.

1 As to the requirement for registration see PARA 367.

Air Navigation Order 2005, SI 2005/1970, art 5(1). Contravention of art 5 is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale: see art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

An aircraft registered in the United Kingdom must bear marks complying with Sch 2 Pt B: art 5(2). The nationality mark, a capital 'G', is followed by a hyphen and a group of four capital letters comprising the registration mark: see Sch 2 Pt B para 1(1). The marks must also be inscribed on a fireproof metal plate affixed in a prominent position: see Sch 2 Pt B para 1(4). As to the position, size, width, spacing, thickness, clarity and visibility of the marks see Sch 2 Pt B paras 1-3. As to the power to direct that an aircraft not properly marked must not fly see art 144(1); and PARA 528.

3 See the Air Navigation Order 2005, SI 2005/1970, art 5(3)(a). Marks approved by the Civil Aviation Authority ('CAA') for the purposes of flight in accordance with the 'B' conditions contained in Sch 3 Pt A (see PARA 379) are deemed not to purport to indicate that the aircraft is registered in a country in which it is not in fact registered: art 5(4). As to the CAA see PARA 50 et seq.

4 See the Air Navigation Order 2005, SI 2005/1970, art 5(3)(b). 'State aircraft' is not defined in the Air Navigation Order 2005, SI 2005/1970.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(i) EASA and non-EASA Aircraft/375. Certification requirements for EASA and non-EASA aircraft.

(3) CERTIFICATES

(i) EASA and non-EASA Aircraft

375. Certification requirements for EASA and non-EASA aircraft.

Both the Civil Aviation Authority '(CAA')¹ and the European Aviation Safety Agency ('EASA')² have functions concerned with the certification of aircraft. The requirements for certification differ depending on whether an aircraft is an EASA aircraft³ or a non-EASA aircraft⁴. Both EASA and the CAA issue certificates of airworthiness, and permits to fly.

¹ As to the CAA see PARA 50 et seq.

² 'EASA' means the European Aviation Safety Agency (see PARA 24): Air Navigation Order 2005, SI 2005/1970, art 155(1). As to EASA see PARA 24.

³ 'EASA aircraft' means an aircraft which is required by virtue of European Parliament and Council Regulation 1592/2002 (OJ L 240, 7.9.2002) on common rules in the field of civil aviation and establishing a European Aviation Safety Agency and any implementing rules adopted by the Commission in accordance with that Regulation to hold an EASA certificate of airworthiness, an EASA restricted certificate of airworthiness or an EASA permit to fly: Air Navigation Order 2005, SI 2005/1970, art 155(1). 'EASA restricted certificate of airworthiness' means a restricted certificate of airworthiness issued in respect of an EASA aircraft under and in accordance with EC Commission Regulation 1702/2003 (OJ L 243, 27.9.2003, p 6) Pt 21 H; and 'EASA permit to fly' means a permit to fly issued in respect of an EASA aircraft under and in accordance with EC Commission Regulation 1702/2003 (OJ L 243, 27.9.2003, p 6) Pt 21 H: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to permits to fly see PARA 385 et seq.

⁴ 'Non-EASA aircraft' means an aircraft which is not required, by virtue of European Parliament and Council Regulation 1592/2002 (OJ L 240, 7.9.2002) on common rules in the field of civil aviation and establishing a European Aviation Safety Agency and any implementing rules adopted by the Commission in accordance with that Regulation, to hold an EASA certificate of airworthiness, an EASA restricted certificate of airworthiness or an EASA permit to fly; and a non-EASA balloon, a non-EASA glider and a non-EASA kite are to be construed accordingly: Air Navigation Order 2005, SI 2005/1970, art 155(1).

UPDATE

375 Certification requirements for EASA and non-EASA aircraft

NOTES 3, 4--Regulation 1592/2002 replaced: European Parliament and EC Council Regulation 216/2008 (OJ L79, 19.3.2008, p 1) (amended by EC Commission Regulation 690/2009 (OJ L199, 31.7.2009, p 6), European Parliament and EC Council Regulation 1108/2009 (OJ L309, 24.11.2009, p 51)).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(ii) Certificates of Airworthiness/376. Necessity for certificate of airworthiness.

(ii) Certificates of Airworthiness

376. Necessity for certificate of airworthiness.

Subject to certain exceptions¹, an aircraft may not fly unless there is in force in respect of it a certificate of airworthiness² duly issued or rendered valid³ under the law of the country in which the aircraft is registered or the state of the operator⁴, and any conditions subject to which the certificate was issued or rendered valid are complied with⁵. In the case of an aircraft registered in the United Kingdom⁶, the certificate of airworthiness must be issued in accordance with the provisions of the Air Navigation Order 2005⁷.

An aircraft registered in the United Kingdom with an EASA certificate of airworthiness may not fly otherwise than in accordance with any conditions or limitations contained in its flight manual⁸ unless otherwise permitted by the CAA⁹.

1 The most practically significant of these exceptions concerns the aircraft having a permit to fly: see generally PARAS 377-379. As to permits to fly see PARAS 385-387.

2 For these purposes, a certificate of airworthiness (1) includes an EASA restricted certificate of airworthiness issued by the Civil Aviation Authority ('CAA'); and (2) includes an EASA restricted certificate of airworthiness issued by the competent authority of a state other than the United Kingdom which does not contain a condition restricting the aircraft to flight within the airspace of the issuing state; but (3) does not include an EASA restricted certificate of airworthiness issued by the competent authority of a state other than the United Kingdom which contains a condition restricting the aircraft to flight within the airspace of the issuing state: Air Navigation Order 2005, SI 2005/1970, art 8(4). As to the CAA see PARA 50 et seq. 'Certificate of airworthiness' includes in the case of a national certificate of airworthiness any validation of it, and any flight manual, performance schedule or other document, whatever its title, incorporated by reference in that certificate relating to the certificate of airworthiness: Air Navigation Order 2005, SI 2005/1970, art 155(1). 'National certificate of airworthiness' means a certificate of airworthiness issued under and in accordance with the Air Navigation Order 2005, SI 2005/1970, Pt 3 (arts 8-24) and which is not an EASA certificate of airworthiness; and 'EASA certificate of airworthiness' means a certificate of airworthiness issued in respect of an EASA aircraft under and in accordance with EC Commission Regulation 1702/2003 (OJ L 243, 27.9.2003, p 6) laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations Pt 21 H: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'EASA' see PARA 375 note 2.

3 As to the validation of foreign certificates see PARA 382.

4 As to the operator of an aircraft see PARA 437. By virtue of the Air Navigation Order 2005, SI 2005/1970, art 155(1), 'state of the operator' means the state in which the operator of an aircraft has his principal place of business or, if he has no such place of business, his permanent residence, in circumstances where:

- 31 (1) that aircraft is registered in another contracting state;
- 32 (2) the operator is operating that aircraft pursuant to an agreement for its lease, charter or interchange or any similar arrangement;
- 33 (3) the state in which the aircraft is registered has, by agreement with the state in which the operator of the aircraft has his principal place of business or, if he has no such place of business, his permanent residence, agreed to transfer to it its functions and duties as state of registry in respect of that aircraft in relation to airworthiness (see art 8(1); and the text and note 5), aircraft radio equipment (see art 20(1); and PARA 416), flight crew licensing (see art 26(3); and PARA 439), or radio licensing (see art 55(1); and PARA 521 et seq); and
- 34 (4) the agreement has been registered with the Council of the International Civil Aviation Organisation ('ICAO') or the existence and scope of the agreement have been directly communicated to the CAA.

As to the meaning of 'contracting state' see PARA 367 note 4. As to the flight crew see PARA 456 et seq. As to registration see PARA 367 et seq. As to the Council of ICAO see PARA 22.

5 Air Navigation Order 2005, SI 2005/1970, art 8(1). In the case of a non-EASA aircraft registered in the United Kingdom the certificate of airworthiness is a national certificate of airworthiness; and in the case of an EASA aircraft registered in the United Kingdom the certificate of airworthiness is an EASA certificate of airworthiness issued by the CAA: art 8(3). As to the meaning of 'EASA aircraft' and 'non-EASA aircraft' see PARA 375 notes 3, 4. Contravention of art 8 is an offence punishable on summary conviction by a fine not exceeding the statutory maximum, or on conviction on indictment by a fine or imprisonment for a term not exceeding two years or both: see art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12. As to the power to direct that an aircraft must not fly if art 8 is not complied with see art 144(1); and PARA 528.

An aircraft flying clear of cloud and with the surface in sight is, for the purposes of art 8, deemed to be flying in accordance with the visual flight rules ('VFR'): art 8(6) (added by SI 2007/274). As to the visual flight rules see PARA 551.

6 As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 See the Air Navigation Order 2005, SI 2005/1970, art 9; and PARAS 380-383.

8 'Flight manual' means a document provided for an aircraft stating the limitations within which the aircraft is considered airworthy as defined by the appropriate airworthiness requirements, and additional instructions and information necessary for the safe operation of the aircraft: Air Navigation Order 2005, SI 2005/1970, art 155(1).

9 Air Navigation Order 2005, SI 2005/1970, art 8(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(ii) Certificates of Airworthiness/377. Flights permitted without certificate of airworthiness.

377. Flights permitted without certificate of airworthiness.

An aircraft may fly without a certificate of airworthiness¹ where the flight begins and ends in the United Kingdom² without passing over any other country, provided the aircraft is (1) an aircraft flying in accordance with a national permit to fly, an EASA permit to fly³ or a certificate of validation issued by the Civil Aviation Authority ('CAA')⁴; (2) a non-EASA glider⁵ not being used for the public transport⁶ of passengers⁷ or aerial work⁸; (3) a non-EASA balloon flying on a private flight⁹; (4) a non-EASA kite¹⁰; (5) a non-EASA aircraft flying in accordance with special conditions¹¹; or (6) a microlight aeroplane that is designed to carry one person only, has a maximum weight without its pilot and fuel of 115 kilograms, has a maximum wing loading without its pilot and fuel of 10 kilograms per square metre and is flying on a private flight¹².

1 As to certificates of airworthiness see PARA 376.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 As to permits to fly see PARAS 385-387.

4 Air Navigation Order 2005, SI 2005/1970, art 8(2)(e) (amended by SI 2007/3467). As to certificates of validation see PARA 382. As to the CAA see PARA 50 et seq.

5 As to the meaning of 'non-EASA aircraft' see PARA 375 note 4. As to the meaning of 'glider' see PARA 360 note 6.

6 As to public transport see PARA 363.

7 As to the meaning of 'passenger' see PARA 362 note 5.

8 Air Navigation Order 2005, SI 2005/1970, art 8(2)(a). As to aerial work see PARA 364. The exclusion does not apply where the aerial work in question consists of the giving of instruction in flying or the conducting of flying tests in a glider owned or operated by a flying club of which the person giving the instruction or conducting the test and the person receiving the instruction or undergoing the test are both members: art 8(2)(a).

9 Air Navigation Order 2005, SI 2005/1970, art 8(2)(b). As to the meaning of 'private flight' see PARA 365.

10 Air Navigation Order 2005, SI 2005/1970, art 8(2)(c).

11 Air Navigation Order 2005, SI 2005/1970, art 8(2)(d). The conditions referred to are the 'A' conditions or the 'B' conditions set out in Sch 3 Pt A: see PARAS 378-379.

12 Air Navigation Order 2005, SI 2005/1970, art 8(2)(f) (added by SI 2007/3467).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(ii) Certificates of Airworthiness/378. 'A' conditions.

378. 'A' conditions.

The 'A' conditions¹ allow a non-EASA aircraft² registered in the United Kingdom³ to fly, subject to specified conditions⁴, in circumstances when either it does not have a certificate of airworthiness⁵ duly issued or rendered valid under the law of the United Kingdom⁶, or the certificate of airworthiness or certificate of validation issued in respect of the aircraft has ceased to be in force⁷.

An aircraft which does not have a duly issued and validated certificate of airworthiness may fly only for the purpose of enabling it:

- 279 (1) to qualify, after an application has been made, for the issue or renewal of a certificate in respect of the aircraft, or of a validation of such a certificate, or to carry out a functional check of a previously approved modification⁸;
- 280 (2) to proceed to or from a place at which any inspection, repair, modification, maintenance, approval, test or weighing of, or the installation of equipment in, the aircraft is to take place or has taken place for one of the above purposes⁹;
- 281 (3) to proceed to or from a place at which the installation of furnishings in, or the painting of, the aircraft is to be undertaken¹⁰; or
- 282 (4) to proceed to or from a place at which it is to be or has been stored¹¹.

An aircraft in respect of which a certificate of airworthiness or certificate of validation has ceased to be in force may fly only for the purpose of enabling it:

- 283 (a) to proceed to a place at which any scheduled inspection or maintenance¹² is to take place¹³;
- 284 (b) to proceed to a place at which any mandatory inspection, maintenance or modification¹⁴ is to take place and in respect of which flight the Civil Aviation Authority ('CAA') has given permission in writing¹⁵; or
- 285 (c) to carry out a functional check, test or in-flight adjustment in connection with the carrying out in a manner approved by the CAA of any overhaul, repair, previously approved modification, inspection or maintenance¹⁶.

An aircraft without a certificate of airworthiness may fly in the circumstances specified above only if:

- 286 (i) including any modifications, it is of a design which previously has been approved by the CAA, or by an organisation approved for that purpose by the CAA, as being compliant with a standard accepted by the CAA as appropriate for the issue of a national certificate of airworthiness¹⁷;
- 287 (ii) it and its engines are certified as fit for flight by the holder of an aircraft maintenance engineer's licence¹⁸, being a licence which entitles him to issue that certificate, or by a person approved by the CAA for the purpose of issuing such certificates¹⁹;
- 288 (iii) it carries the minimum flight crew specified in a previous certificate of airworthiness or validation or flight manual²⁰ for the aircraft or for an aircraft of identical design²¹;

- 289 (iv) it does not carry passengers²² or cargo²³ except persons performing duties in connection with the flight²⁴; and
- 290 (v) it does not fly over any congested area²⁵ of a city, town or settlement except where necessary to take off or land²⁶.

1 See the Air Navigation Order 2005, SI 2005/1970, arts 8(2)(d), 155(1), Sch 3 Pt A para 1 'A conditions'. See also PARA 377.

2 As to the meaning of 'non-EASA aircraft' see PARA 375 note 4.

3 As to registration see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 See the text and notes 7-24.

5 As to certificates of airworthiness see PARA 376.

6 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 1(1)(a). As to the issue of certificates of airworthiness see PARA 380; and as to the validation of foreign certificates see PARA 382.

7 I.e. by virtue of any of the matters specified in Air Navigation Order 2005, SI 2005/1970, art 10 (see PARA 384): see Sch 3 Pt A para 1(1)(b).

8 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A 'A' conditions para 1(2)(a)(i). 'Previously approved modification' means a modification which has previously been approved by the Civil Aviation Authority ('CAA') in respect of that aircraft or another aircraft of the same type: see Sch 3 Pt A para 1(2)(a)(i). As to the CAA see PARA 50 et seq.

9 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 1(2)(a)(ii).

10 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 1(2)(a)(ii).

11 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 1(2)(a)(iii).

12 I.e. as required by virtue of Air Navigation Order 2005, SI 2005/1970, art 10(b)(ii) (see PARA 384): see Sch 3 Pt A para 1(2)(b)(i).

13 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 1(2)(b)(i).

14 I.e. as required by virtue of the Air Navigation Order 2005, SI 2005/1970, art 10(b)(i) or art 10(c) (see PARA 384): see Sch 3 Pt A para 1(2)(b)(ii).

15 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 1(2)(b)(ii).

16 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 1(2)(b)(iii). As to the modification, inspection or maintenance referred to in the text see art 10; and PARA 384.

17 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 1(3).

18 I.e. a licence granted under the Air Navigation Order 2005, SI 2005/1970, art 18: see PARA 409.

19 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 1(4). As to certificates of maintenance review see PARA 406 et seq.

20 As to the meaning of 'flight manual' see PARA 376 note 8.

21 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 1(5). As to the crew of an aircraft generally see PARA 456 et seq.

22 As to the meaning of 'passenger' see PARA 362 note 5.

23 As to the meaning of 'cargo' see PARA 363 note 5.

24 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 1(6).

25 'Congested area' in relation to a city, town or settlement, means any area which is substantially used for residential, industrial, commercial or recreational purposes: Air Navigation Order 2005, SI 2005/1970, art 155(1). See *Cameron v Smith* 1982 SLT 398.

26 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 1(7). As to the meaning of 'to land' see PARA 226 note 5.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(ii) Certificates of Airworthiness/379. 'B' conditions.

379. 'B' conditions.

The 'B' conditions¹ allow a non-EASA aircraft² to fly, subject to specified conditions³, whether or not it is registered⁴. The conditions enable a registered aircraft to fly when there is not in force in respect of that aircraft a certificate of airworthiness⁵ duly issued or rendered valid under the law of the country in which the aircraft is registered⁶, and enable an unregistered aircraft to fly when there is not in force in respect of that aircraft either a certificate of airworthiness duly issued or rendered valid under the law of the United Kingdom⁷ or a permit to fly issued by the Civil Aviation Authority ('CAA')⁸ in respect of that aircraft⁹.

Whatever the registration status of the aircraft, it may fly under the 'B' conditions only for the purpose of:

- 291 (1) experimenting with or testing the aircraft or its engines and equipment¹⁰;
- 292 (2) enabling the aircraft to qualify for the issue or validation of a certificate of airworthiness or the approval of modifications¹¹ or the issue of a permit to fly¹²;
- 293 (3) demonstrating and displaying the aircraft, any engines installed on it or any equipment installed or carried in the aircraft with a view to the sale thereof or the sale of other similar aircraft, engines or equipment¹³;
- 294 (4) demonstrating and displaying the aircraft to employees of the operator¹⁴;
- 295 (5) giving flying training to, or testing, flight crew¹⁵ employed by the operator, or training or testing other persons employed by the operator¹⁶;
- 296 (6) proceeding to or from a place at which any experiment, inspection, repair, modification, maintenance, approval, test or weighing of the aircraft, or the installation of equipment in the aircraft, or any demonstration, display or training is to take place for any of the purposes referred to above¹⁷; or
- 297 (7) proceeding to or from a place at which installation of furnishings in, or the painting of, the aircraft is to be undertaken¹⁸.

In any flight undertaken in pursuance of the 'B' conditions, the aircraft must not carry any cargo¹⁹, other than certain equipment carried in connection with the purpose of the flight²⁰, or any persons other than the flight crew²¹ except:

- 298 (a) persons employed by the operator who during the flight carry out duties or are tested or receive training in connection with a specified purpose²²;
- 299 (b) persons acting on behalf of manufacturers of component parts of the aircraft (including its engines) or of equipment installed or carried in the aircraft for in-flight duties in connection with a specified purpose²³;
- 300 (c) persons approved by the CAA²⁴ as qualified to furnish reports²⁵;
- 301 (d) other persons who are carried in the aircraft to carry out a technical evaluation of the aircraft or its operation²⁶; or
- 302 (e) persons employed by the operator or persons acting on behalf of the manufacturers of component parts of the aircraft (including its engines) or of equipment installed in or carried in the aircraft in connection with an approved flight purpose²⁷, who have duties in connection with that purpose²⁸.

Any flight undertaken in accordance with the 'B' conditions must be operated by a person approved by the CAA for the purposes of those conditions and subject to any additional

conditions which may be specified in such an approval²⁹, and no person may act as pilot in command³⁰ of the aircraft except a person approved for the purpose by the CAA³¹. If not registered in the United Kingdom, the aircraft must be marked in a manner approved by the CAA for these purposes³² and must comply with specified safety requirements³³. The aircraft may not be flown over any congested area³⁴ of a city, town or settlement except in accordance with procedures approved by the CAA in relation to the flight³⁵.

1 See the Air Navigation Order 2005, SI 2005/1970, arts 8(2)(d), 155(1), Sch 3 Pt A para 2 'B' conditions. See also PARA 377.

2 As to the meaning of 'non-EASA aircraft' see PARA 375 note 4.

3 See the text and notes 10-35.

4 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(1). The reference in the text to registration is a reference to registration in accordance with art 3(1). As to registration see PARA 367 et seq.

5 As to certificates of airworthiness see PARA 376.

6 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(1)(a). As to the issue of certificates of airworthiness see PARA 380; and as to the validation of foreign certificates see PARA 382.

7 As to the meaning of 'United Kingdom' see PARA 30 note 1.

8 As to the CAA see PARA 50 et seq.

9 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(1)(b).

10 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(2)(a).

11 As to the approval of modifications see PARA 426.

12 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(2)(b).

13 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(2)(c).

14 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(2)(d). As to the operator of an aircraft see PARA 437.

15 As to the flight crew see PARA 456 et seq.

16 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(2)(e). See further Sch 3 Pt A para 2(7)(a); and the text and note 22.

17 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(2)(f).

18 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(2)(f).

19 As to the meaning of 'cargo' see PARA 363 note 5.

20 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A 'B' para 2(7)(e). The flight purposes for which cargo may be carried are those set out in Sch 3 Pt A para 2(2)(f): see the text and notes 17-18.

21 The aircraft must carry such crew as to ensure its safety: Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(5). As to the crew of an aircraft generally see PARA 456 et seq.

22 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(7)(a). The specified purposes are those set out in Sch 3 Pt A para 2(2): see the text and notes 10-18.

23 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(7)(b). The specified purposes are those set out in Sch 3 Pt A para 2(2): see the text and notes 10-18.

24 Ie under the Air Navigation Order 2005, SI 2005/1970, art 165: see PARA 380.

25 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(7)(c). The reports referred to in the text are those required by virtue of art 9: see PARA 383.

- 26 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(7)(d).
- 27 The flight purposes for which such persons may be carried are those set out in Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(2)(f): see the text and notes 17-18.
- 28 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A 'B' conditions (7)(f).
- 29 Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(3).
- 30 As to the meaning of 'pilot in command' see PARA 606 note 6.
- 31 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(6).
- 32 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(4).
- 33 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(4). This requires that art 20 (radio equipment: see PARA 416), art 22 (aircraft, engine and propeller log books: see PARA 413), art 52 (pre-flight action: see PARA 494), art 55 (operation of radio: see PARAS 521-522), and arts 86, 88 (documents and records: see PARA 483 et seq), so far as applicable, be complied with as if the aircraft were registered in the United Kingdom.
- 34 As to the meaning of 'congested area' see PARA 378 note 25.
- 35 See the Air Navigation Order 2005, SI 2005/1970, Sch 3 Pt A para 2(8).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(ii) Certificates of Airworthiness/380. Issue of certificates of airworthiness.

380. Issue of certificates of airworthiness.

The Civil Aviation Authority ('CAA')¹ must issue a national certificate of airworthiness² in respect of a non-EASA aircraft³ if it is satisfied that the aircraft is fit to fly, having regard to:

- 303 (1) the design, construction, workmanship and materials of the aircraft (including in particular any engines fitted to it), and of any equipment carried in the aircraft which it considers necessary for the airworthiness of that aircraft⁴; and
- 304 (2) the results of flying trials and other tests⁵.

If the CAA refuses to grant a certificate, there is a right to have the decision to refuse reviewed⁶.

1 As to the CAA see PARA 50 et seq.

2 As to certificates of airworthiness see PARA 376. Nothing in the Air Navigation Order 2005, SI 2005/1970, obliges the CAA to accept an application for the issue of a national certificate of airworthiness or a certificate of validation or for the variation or renewal of any such certificate when the application is not supported by such reports from such approved persons as the CAA may specify (either generally or in a particular case or class of cases): art 9(7). Provision as to the approval of persons who may furnish reports, and the acceptance of such reports, is made by art 165.

3 As to the meaning of 'non-EASA aircraft' see PARA 375 note 4.

4 Air Navigation Order 2005, SI 2005/1970, art 9(1)(a). As to aircraft engine emissions certificates see PARA 388 et seq. A certified authority, and its inspector, who certify a light aircraft as fit to fly both owe a duty of care to a passenger: see *Perrett v Collins* [1998] 2 Lloyd's Rep 255, CA.

5 Air Navigation Order 2005, SI 2005/1970, art 9(1)(b). If the CAA has issued a certificate of airworthiness in respect of an aircraft which, in its opinion, is a prototype aircraft or a modification of a prototype aircraft, it may dispense with flying trials in the case of any other aircraft if satisfied that it conforms to such prototype or modification: art 9(2).

6 See the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6(3)(b); and PARA 94.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(ii) Certificates of Airworthiness/381. Particulars and conditions in certificates of airworthiness.

381. Particulars and conditions in certificates of airworthiness.

Every national certificate of airworthiness¹ must specify the category which is, in the opinion of the Civil Aviation Authority ('CAA')², appropriate to the aircraft concerned³.

The certificate of airworthiness is issued subject to the condition that the aircraft must be flown only for the purposes indicated in relation to the appropriate category⁴, and may be issued subject to such other conditions relating to the airworthiness of the aircraft as the CAA thinks fit⁵.

A flight manual⁶, performance schedule or other document incorporated by reference in the certificate of airworthiness may be varied by the CAA on sufficient ground being shown to its satisfaction, whether or not after due inquiry⁷.

1 As to certificates of airworthiness see PARA 376 et seq.

2 As to the CAA see PARA 50 et seq.

3 See the Air Navigation Order 2005, SI 2005/1970, art 9(3). As to the categories of aircraft see Sch 3 Pt B; and PARA 362. Any certificate of airworthiness issued by the CAA prior to the date on which the Air Navigation Order 2005, SI 2005/1970, came into force (ie 20 August 2005: see art 1) which is specified as being in the Transport Category (Passenger), Transport Category (Cargo), Aerial Work or Private Category is deemed to be (1) in the case of a non-EASA aircraft a national certificate of airworthiness in the standard category referred to in Sch 3 Pt B; and (2) in the case of an EASA aircraft an EASA certificate of airworthiness: art 9(4). As to the meaning of 'non-EASA aircraft' see PARA 375 note 4; and as to the meaning of 'EASA aircraft' see PARA 375 note 3.

4 Air Navigation Order 2005, SI 2005/1970, art 9(3).

5 Air Navigation Order 2005, SI 2005/1970, art 9(5).

6 As to the meaning of 'flight manual' see PARA 376 note 8.

7 See the Air Navigation Order 2005, SI 2005/1970, art 92(6).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(ii) Certificates of Airworthiness/382. Validation of overseas certificates of airworthiness.

382. Validation of overseas certificates of airworthiness.

Where a certificate of airworthiness has been issued in respect of an aircraft registered elsewhere than in the United Kingdom¹ under the law of any country other than the United Kingdom, the Civil Aviation Authority ('CAA')² may issue a certificate of validation rendering that certificate of airworthiness valid³.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the issue of certificates of airworthiness under the law of the United Kingdom see PARA 376 et seq.

2 As to the CAA see PARA 50 et seq.

3 See the Air Navigation Order 2005, SI 2005/1970, art 9(6). 'Certificate of validation' means a certificate issued by the CAA rendering valid for the purposes of the Air Navigation Order 2005, SI 2005/1970, a certificate of airworthiness or a permit to fly issued in respect of an aircraft registered elsewhere than in the United Kingdom or a flight crew licence granted under the law of a country other than the United Kingdom: art 155(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(ii) Certificates of Airworthiness/383. Renewal of certificates.

383. Renewal of certificates.

Subject to the provisions relating to the issue and validation of certificates¹, the Civil Aviation Authority ('CAA')² may from time to time renew a certificate of airworthiness³ or a validation⁴ for such further period as it thinks fit, and may require the application to be supported by such reports from such approved persons as the CAA may specify (either generally or in a particular case or class of cases)⁵.

1 See the Air Navigation Order 2005, SI 2005/1970, art 9; and PARAS 380-382.

2 As to the CAA see PARA 50 et seq.

3 As to certificates of airworthiness see PARA 376 et seq.

4 As to the validation of foreign certificates see PARA 382.

5 See the Air Navigation Order 2005, SI 2005/1970, art 9(7). A certificate may, however, be revoked, varied or suspended by the CAA: see art 92; and PARA 490.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(ii) Certificates of Airworthiness/384. Discontinuance of certificates.

384. Discontinuance of certificates.

A certificate of airworthiness¹ or validation² issued in respect of an aircraft registered in the United Kingdom³ ceases to be in force⁴:

- 305 (1) if the aircraft, or such of its equipment as is necessary for the airworthiness of the aircraft, is overhauled, repaired or modified, or if any part of the aircraft or of such equipment is removed or is replaced, otherwise than in a manner and with material of a type approved by the Aviation Safety Agency ('EASA')⁵ in the case of an EASA aircraft⁶ or the Civil Aviation Authority ('CAA') in the case of a non-EASA aircraft⁷ either generally or in relation to a class of aircraft or to the particular aircraft⁸;
- 306 (2) until the satisfactory completion of any mandatory⁹ or scheduled¹⁰ inspection made for the purpose of ascertaining whether the aircraft remains airworthy, or mandatory or scheduled maintenance of the aircraft or of any of its necessary equipment¹¹; or
- 307 (3) until the completion to the satisfaction of EASA or the CAA as the case may be of any modification of the aircraft or of any equipment necessary for the airworthiness of the aircraft, being a modification required by EASA or the CAA for the purpose of ensuring that the aircraft remains airworthy¹².

1 As to certificates of airworthiness see PARA 376 et seq.

2 As to the validation of foreign certificates see PARA 382.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 See the Air Navigation Order 2005, SI 2005/1970, art 10. A certificate may, however, be revoked, varied or suspended by the Civil Aviation Authority ('CAA'): see art 92; and PARA 490. As to renewal see PARA 383. As to the CAA see PARA 50 et seq.

5 As to EASA see PARA 24.

6 As to the meaning of 'EASA aircraft' see PARA 375 note 3.

7 As to the meaning of 'non-EASA aircraft' see PARA 375 note 4.

8 Air Navigation Order 2005, SI 2005/1970, art 10(a). As to overhauls, repairs and modifications see PARA 425.

9 I.e any inspection or maintenance classified as mandatory by EASA or the CAA.

10 I.e any inspection or maintenance required by a maintenance schedule approved by the CAA in relation to that aircraft.

11 Air Navigation Order 2005, SI 2005/1970, art 10(b).

12 Air Navigation Order 2005, SI 2005/1970, art 10(c).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(iii) Permits to Fly/385. Issue and validity of national permits to fly.

(iii) Permits to Fly

385. Issue and validity of national permits to fly.

The Civil Aviation Authority ('CAA')¹ must issue in respect of any non-EASA aircraft² registered in the United Kingdom³ a national permit to fly⁴ if it is satisfied that the aircraft is fit to fly having regard to the airworthiness of the aircraft and the conditions to be attached to the permit⁵. However, the CAA must refuse to issue a national permit to fly in respect of a non-EASA aircraft registered in the United Kingdom if it appears to the CAA that the aircraft is eligible for and ought to fly under and in accordance with a national certificate of airworthiness⁶.

An aircraft flying in accordance with a national permit to fly may not fly for the purpose of public transport⁷ or aerial work⁸ other than aerial work which consists of flights for the purpose of flying displays⁹, associated practice, test and positioning flights or the exhibition or demonstration of the aircraft¹⁰. No person may be carried during flights for the purpose of flying displays or demonstration flying except the minimum flight crew, unless the prior permission of the CAA has been obtained¹¹. A placard must be affixed to any aircraft flying in accordance with a permit to fly in full view of the occupants, giving a prescribed warning that the aircraft has not been certificated to an international requirement¹².

An aircraft flying in accordance with a permit to fly may only be flown by day¹³ and in accordance with the visual flight rules¹⁴ unless the prior permission of the CAA has been obtained¹⁵.

A national permit to fly issued in respect of an aircraft ceases to be in force¹⁶:

- 308 (1) until the satisfactory completion of any inspection made for the purpose of ascertaining whether the aircraft remains airworthy, or of any modification or maintenance of the aircraft or any of its equipment, which inspection, modification or maintenance has been made mandatory by the CAA or become required as a condition of the permit to fly¹⁷;
- 309 (2) if any other conditions of the permit are not complied with¹⁸;
- 310 (3) if the aircraft, engines or propellers, or such of its equipment as is necessary for the airworthiness of the aircraft, are modified or repaired; unless the repair or modification has been approved by the CAA or by a person approved by the CAA for the purpose¹⁹;
- 311 (4) unless the permit includes a current certificate of validity issued by the CAA or by a person approved by the CAA for the purpose²⁰.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'non-EASA aircraft' see PARA 375 note 4.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 'National permit to fly' means a permit to fly issued under and in accordance with the Air Navigation Order 2005, SI 2005/1970, Pt 3 (arts 8-24) and which is not an EASA permit to fly: art 155(1). As to the meaning of 'EASA permit to fly' see PARA 375 note 3.

5 Air Navigation Order 2005, SI 2005/1970, art 11(1)(a). The CAA may issue a national permit to fly subject to such conditions relating to the airworthiness, operation or maintenance of the aircraft as it thinks fit: art 11(5). Nothing in the Air Navigation Order 2005, SI 2005/1970, obliges the CAA to accept an application for the

issue, variation or renewal of a national permit to fly when the application is not supported by such reports from such approved persons as the CAA may specify (either generally or in a particular case or class of cases): art 11(9). A permit may be revoked, varied or suspended by the CAA: see art 92; and PARA 490.

6 Air Navigation Order 2005, SI 2005/1970, art 11(1)(b). As to certificates of airworthiness see PARA 376 et seq.

7 As to public transport see PARA 363.

8 As to aerial work see PARA 364. With the permission of the CAA, an aircraft flying in accordance with a national permit to fly may fly for the purpose of aerial work which consists of the giving of instruction in flying or the conduct of flying tests, subject to the aircraft being owned or operated under arrangements entered into by a flying club of which the person giving the instruction or conducting the test and the person receiving the instruction or undergoing the test are both members: art 11(4).

9 As to the meaning of 'flying display' see PARA 365 note 5.

10 Air Navigation Order 2005, SI 2005/1970, art 11(2).

11 Air Navigation Order 2005, SI 2005/1970, art 11(3).

12 Air Navigation Order 2005, SI 2005/1970, art 11(7).

13 For this purpose, 'day' means the time from half an hour before sunrise until half an hour after sunset (both times exclusive), sunset and sunrise being determined at surface level: Air Navigation Order 2005, SI 2005/1970, art 11(10).

14 As to the visual flight rules see PARA 551.

15 Air Navigation Order 2005, SI 2005/1970, art 11(8).

16 Air Navigation Order 2005, SI 2005/1970, art 11(6).

17 Air Navigation Order 2005, SI 2005/1970, art 11(6)(a).

18 Air Navigation Order 2005, SI 2005/1970, art 11(6)(b).

19 Air Navigation Order 2005, SI 2005/1970, art 11(6)(c). As to overhauls, repairs and modifications see PARA 425.

20 Air Navigation Order 2005, SI 2005/1970, art 11(6)(d).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(iii) Permits to Fly/386. Issue of EASA permits to fly.

386. Issue of EASA permits to fly.

Where the Civil Aviation Authority ('CAA')¹ is authorised so to do² it must in respect of an EASA aircraft³ registered in the United Kingdom⁴ issue an EASA permit to fly⁵ in the same circumstances as it would issue a national permit to fly to a non-EASA aircraft⁶.

1 As to the CAA see PARA 50 et seq.

2 Ie under EC Commission Regulation 1702/2003 (OJ L243, 27.9.2003, p 6) laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations.

3 As to the meaning of 'EASA aircraft' see PARA 375 note 3.

4 As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 As to the meaning of 'EASA permit to fly' see PARA 375 note 3.

6 Air Navigation Order 2005, SI 2005/1970, art 12. As to the meaning of 'non-EASA aircraft' see PARA 375 note 4. As to the issue of national permits to fly see PARA 385.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(iii) Permits to Fly/387. Issue of certificates of validation of permits to fly or equivalent documents.

387. Issue of certificates of validation of permits to fly or equivalent documents.

The Civil Aviation Authority ('CAA')¹ must issue in respect of any aircraft registered elsewhere than in the United Kingdom² a certificate of validation if it is satisfied that there is in respect of the aircraft a permit to fly or equivalent document issued or validated by the competent authority of the country in which the aircraft is registered which applies standards which are substantially equivalent to those required for the issue of a permit to fly by the CAA³. An aircraft flying in accordance with a certificate of validation may not fly for the purpose of public transport⁴ or aerial work⁵ other than aerial work which consists of flights for the purpose of flying displays⁶, associated practice, test and positioning flights or the exhibition or demonstration of the aircraft⁷.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 Air Navigation Order 2005, SI 2005/1970, art 13(1). As to the requirements for the issue of national permits to fly see PARA 385. The CAA may issue a certificate of validation subject to such other conditions relating to the airworthiness, operation or maintenance of the aircraft as it thinks fit: art 13(3). A permit may be revoked, varied or suspended by the CAA: see art 92; and PARA 490.

4 As to public transport see PARA 363.

5 As to aerial work see PARA 364.

6 As to the meaning of 'flying display' see PARA 365 note 5.

7 Air Navigation Order 2005, SI 2005/1970, art 13(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(iv) Certificates as to Aircraft Engine Emissions/388. Fuel venting requirements.

(iv) Certificates as to Aircraft Engine Emissions

388. Fuel venting requirements.

No aircraft¹ may land² or take off in the United Kingdom³ unless it is certified or is of a type certified⁴ as complying with statutory requirements relating to fuel venting⁵ and it is fitted with the engines specified in the emissions certification⁶.

1 The Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 8 applies to every jet aircraft in respect of which a certificate of airworthiness was first issued on or after 18 February 1982, and every other aircraft which is powered by one or more than one turbojet engine or turbofan engine where the date of manufacture of any such engine was on or after 18 February 1982: art 8(1).

2 As to the meaning of 'to land' see PARA 226 note 5; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2).

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 It is certified in accordance with the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 11: see PARA 391.

5 The requirements are aimed at preventing the discharge into the atmosphere of liquid fuel from the fuel nozzle manifolds resulting from the process of engine shutdown following normal flight or ground operations: see the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 8(3).

6 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 8(2). Contravention of art 8(2) is an offence punishable on summary conviction by a fine not exceeding the statutory maximum: art 21(4). See further arts 21(1), (2), 22; and PARA 395. As to the statutory maximum see PARA 43 note 12. For exclusions and exemptions from the fuel venting requirements see PARA 392.

UPDATE

388-395 Certificates as to Aircraft Engine Emissions

SI 2002/798 replaced by Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133: see PARA 399-405.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(iv) Certificates as to Aircraft Engine Emissions/389. Smoke emission requirements.

389. Smoke emission requirements.

'Smoke' means the carbonaceous materials in exhaust emissions which obscure the transmission of light¹. An aeroplane² may not land³ or take off in the United Kingdom⁴ unless every engine⁵ which is fitted to the aeroplane is of a type which has been certified⁶ as complying with statutory requirements relating to smoke emissions⁷.

1 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(1).

2 The Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 9 applies to every subsonic aeroplane powered by one or more than one turbojet engine or turbofan engine where the date of manufacture of any such engine was on or after 1 January 1983, and every supersonic aeroplane powered by one or more than one turbojet engine or turbofan engine where the date of manufacture of any such engine was on or after 18 February 1982: art 9(1). 'Subsonic aeroplane' means an aeroplane which is incapable of sustaining level flight at a speed in excess of flight mach 1.0; and 'supersonic aeroplane' means an aeroplane which is capable of sustaining level flight at a speed in excess of flight mach 1.0: art 3(1).

3 As to the meaning of 'to land' see PARA 226 note 5; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1978 ss 17(2)(a), 23(1), (2).

4 As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 ie every engine of the description contained in the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 9(1): see note 2.

6 ie certified in accordance with the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 11: see PARA 391.

7 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 9(2). For turbojet engines or turbofan engines fitted to subsonic aeroplanes, the requirements are those specified in the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742), Annex 16, Vol II (2nd Edn, July 1993), Pt III, Ch 2: see the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, arts 3(1), 9(3)(a). For turbojet or turbofan engines fitted to supersonic aeroplanes, the requirements are those specified in the Chicago Convention Annex 16, Vol II (2nd Edn, July 1993), Pt III, Ch 3: see the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, arts 3(1), 9(3)(b). As to the Chicago Convention see PARA 2 et seq. As to the Annexes to the Chicago Convention see PARA 6.

Contravention of the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 9(2) is an offence punishable on summary conviction by a fine not exceeding the statutory maximum: art 21(4). See further arts 21(1), (2), 22; and PARA 395. As to the statutory maximum see PARA 43 note 12. For exclusions and exemptions from the smoke emission requirements see PARA 392.

UPDATE

388-395 Certificates as to Aircraft Engine Emissions

SI 2002/798 replaced by Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133: see PARA 399-405.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(iv) Certificates as to Aircraft Engine Emissions/390. Requirements relating to the emission of unburned hydrocarbons, carbon monoxide and oxides of nitrogen.

390. Requirements relating to the emission of unburned hydrocarbons, carbon monoxide and oxides of nitrogen.

An aeroplane¹ may not land² or take off in the United Kingdom³ unless every engine⁴ which is fitted to the aeroplane is of a type which has been certified⁵ as complying with the statutory requirements relating to the emission of unburned hydrocarbons, carbon monoxide and oxides of nitrogen⁶.

1 le (1) every aeroplane which is powered by one or more than one turbojet engine or turbofan engine intended for the propulsion of aeroplanes only at subsonic speeds, the rated output of which is greater than 26.7 kilonewtons and the date of manufacture of which was on or after 1 January 1986; and (2) every aeroplane which is powered by one or more than one turbojet or turbofan engine intended for the propulsion of aeroplanes at supersonic speeds, the date of manufacture of which was on or after 18 February 1982: Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 10(1).

For these purposes, 'rated output' has the meaning given in the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742), Annex 16, Vol II (2nd Edn, July 1993), Pt I, Ch 1: Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(1). As to the Chicago Convention see PARA 2 et seq. As to the Annexes to the Chicago Convention see PARA 6. As to the meanings of 'subsonic aeroplane' and 'supersonic aeroplane' see PARA 389 note 2.

2 As to the meaning of 'to land' see PARA 226 note 5; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2).

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 le every engine of the description contained in the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 10(1): see note 1.

5 le certified in accordance with the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 11: see PARA 391.

6 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 10(2). For turbojet or turbofan engines intended for propulsion of aeroplanes only at subsonic speeds, the requirements are those specified in the Chicago Convention, Annex 16, Vol II (2nd Edn, July 1993), Pt III, Ch 2, and for turbojet or turbofan engines intended for propulsion of aeroplanes at supersonic speeds, the requirements are those specified in Annex 16, Vol II (2nd Edn, July 1993), Pt III, Ch 3: Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 10(3). The Civil Aviation Authority ('CAA') may grant an exemption from these requirements in respect of any engine manufactured after 31 December 1999 and in respect of which the CAA is satisfied that not more than 50 engines of that type will be manufactured after that date (art 10(4)(a)), subject to the proviso that any exemption so granted will cease to be valid immediately upon a manufacturer producing more than 50 engines of the type in question after that date (art 10(4)(b)). For other exclusions and exemptions from the requirements relating to the emission of unburned hydrocarbons, carbon monoxide and oxides of nitrogen see PARA 392. As to the CAA see PARA 50 et seq.

Contravention of art 10(2) is an offence punishable on summary conviction by a fine not exceeding the statutory maximum: art 21(4). See further arts 21(1), (3), 22; and PARA 395. As to the statutory maximum see PARA 43 note 12.

UPDATE

388-395 Certificates as to Aircraft Engine Emissions

SI 2002/798 replaced by Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133: see PARA 399-405.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(iv) Certificates as to Aircraft Engine Emissions/391. Certification of compliance with venting and emission requirements.

391. Certification of compliance with venting and emission requirements.

Where it is of the opinion that a type of aircraft, turbojet engine, or turbofan engine, as the case may be, complies with the fuel venting requirements¹, the smoke emission requirements², or the requirements relating to the emission of unburned hydrocarbons, carbon monoxide and oxides of nitrogen³, the Civil Aviation Authority ('CAA')⁴ must certify that type of aircraft or engine as being so compliant⁵. The power of the CAA in this regard extends only to aircraft registered in the United Kingdom⁶: any other aircraft must be certified by the competent authority⁷ of a contracting state⁸ in which the aircraft is registered in accordance with the Chicago Convention⁹. It is an offence to make any false representation, with intent to deceive, for the purpose of procuring the issue, renewal or variation of an emissions certificate¹⁰.

1 As to the fuel venting requirements see the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 8(3); and PARA 388.

2 As to the smoke emission requirements see the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 9(3); and PARA 389.

3 As to the requirements relating to the emission of unburned hydrocarbons, carbon monoxide and oxides of nitrogen see the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 10(3); and PARA 390.

4 As to the CAA see PARA 50 et seq.

5 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 11(1)(a), (2). The applicant for such certification must furnish such evidence, and subject aircraft or engines of a type in respect of which the application has been made to such tests, as the CAA may require: art 11(3). The CAA may accept reports furnished to it by a person whom it may approve, either absolutely or subject to such conditions as it thinks fit, as qualified to furnish such reports: art 25.

6 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 As to the meaning of 'competent authority' see PARA 415 note 9; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2).

8 As to the meaning of 'contracting state' see PARA 367 note 4; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2).

9 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 11(1)(b). As to aircraft registered in other states see the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) art 17 et seq; and PARA 358. As to the Chicago Convention see PARA 2 et seq.

10 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 17(1)(c). The penalty for such an offence is, on summary conviction, a fine not exceeding the statutory maximum: art 21(4). As to offences see further PARA 395. As to the statutory maximum see PARA 43 note 12.

UPDATE

388-395 Certificates as to Aircraft Engine Emissions

SI 2002/798 replaced by Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133: see PARA 399-405.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(iv) Certificates as to Aircraft Engine Emissions/392. Application of emissions certification requirements, and exclusions and exemptions.

392. Application of emissions certification requirements, and exclusions and exemptions.

The emissions certification requirements¹ apply in relation to United Kingdom-registered aircraft² wherever they may be and to other aircraft whenever they are in the United Kingdom³. However, the Civil Aviation Authority ('CAA')⁴ may, after consultation with the Secretary of State⁵, exempt from any of the emissions certification requirements any aircraft or engine or persons or classes of aircraft or engine or persons, either absolutely or subject to such conditions as it thinks fit⁶. In addition, an aircraft without a certificate of airworthiness⁷ flying in accordance with the 'A' conditions or 'B' conditions set out in the Air Navigation Order 2005⁸ is not required to comply with the emissions certification requirements⁹, and neither is an aircraft landing¹⁰ or taking off at a prescribed place¹¹.

The emissions certification requirements apply, in general, to Crown aircraft¹²; and they apply to visiting forces as they apply to Her Majesty's forces raised in the United Kingdom and for the time being serving there¹³. They do not, however, apply to military aircraft¹⁴.

1 In any of the provisions of the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, Pt III (arts 8-13): see PARA 388 et seq.

2 As to registration see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 24.

4 As to the CAA see PARA 50 et seq.

5 As to the Secretary of State see PARA 33.

6 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 13.

7 As to certificates of airworthiness see PARA 376 et seq.

8 As to the 'A' conditions and the 'B' conditions see the Air Navigation Order 2005, SI 2005/1970, art 8(2)(d), Sch 3 Pt A; and PARAS 378-379.

9 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 12(a).

10 As to the meaning of 'to land' see PARA 226 note 5; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2).

11 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 12(b). 'Prescribed' means prescribed by regulations made by the Secretary of State under the Air Navigation (Environmental Standards) Order 2002, SI 2002/798: art 3(1). At the date at which this volume states the law no such regulations had been made.

12 See the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 23(1), (2).

13 See the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 23(3).

14 See the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 23(4).

UPDATE

388-395 Certificates as to Aircraft Engine Emissions

SI 2002/798 replaced by Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133: see PARA 399-405.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(iv) Certificates as to Aircraft Engine Emissions/393. Review of exemptions.

393. Review of exemptions.

The Civil Aviation Authority ('CAA')¹ may, if it thinks fit, provisionally suspend any exemption from the emissions certification requirements² pending inquiry into or consideration of the case³; and, after sufficient ground being shown to its satisfaction after due inquiry, it may revoke, suspend or vary any such exemption⁴. Where an exemption is revoked, suspended or varied, the holder or any person having the possession or custody of it must surrender it to the CAA within a reasonable time after being required to do so⁵. The breach of any condition subject to which any exemption has been issued renders it invalid during the continuance of the breach⁶.

1 As to the CAA see PARA 50 et seq.

2 Ie any exemption issued under the Air Navigation (Environmental Standards) Order 2002, SI 2002/798: see PARA 392.

3 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 16(1).

4 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 16(2).

5 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 16(3).

6 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 16(4).

UPDATE

388-395 Certificates as to Aircraft Engine Emissions

SI 2002/798 replaced by Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133: see PARA 399-405.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(iv) Certificates as to Aircraft Engine Emissions/394. Enforcement of emissions certification requirements.

394. Enforcement of emissions certification requirements.

The Civil Aviation Authority ('CAA')¹ or an authorised person² may, if it appears that any aircraft is intended or likely to be flown in contravention of the emissions certification requirements³, direct the operator⁴ or the commander⁵ of the aircraft that he is not to permit the aircraft to make the flight or any other flight of such description as may be specified in the direction, until the direction has been revoked by the CAA or by an authorised person; and, if the aircraft is in the United Kingdom⁶, the CAA or the authorised person may take such steps as are necessary to detain the aircraft⁷. The operator or commander must comply with any such direction unless he has reasonable excuse⁸. The CAA or any authorised person may enter upon and inspect any aircraft for these purposes⁹. The CAA and any authorised person are also empowered, for the purpose of ascertaining whether the emissions certification requirements are being complied with, to gain access, at all reasonable times, to any aerodrome¹⁰ or any other place in the United Kingdom where an aeroplane has landed¹¹ for the purpose of inspecting and, where applicable, detaining any aircraft¹².

1 As to the CAA see PARA 50 et seq.

2 'Authorised person' means any constable and any person authorised by the CAA (whether by name or by class or description) either generally or in relation to a particular case or class of cases: Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(1).

3 Is in contravention of the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 8(2) (see PARA 388), art 9(2) (see PARA 389) or art 10(2) (see PARA 390). As to the emissions certification requirements see PARA 388 et seq.

4 As to the meaning of 'operator' see PARA 437; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2).

5 As to the meaning of 'commander' see PARA 456; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2).

6 As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 18(1).

8 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 18(2).

9 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 18(3). A person must not intentionally obstruct or impede any person acting in the exercise of his powers or the performance of his duties under the Air Navigation (Environmental Standards) Order 2002, SI 2002/798: art 20. Contravention of this prohibition is an offence: see PARA 395.

10 As to the meaning of 'aerodrome' see PARA 175; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2). In relation to any government aerodrome, the CAA or the authorised person must obtain the permission of the person in charge of that aerodrome before exercising the right of access: art 19(2). As to government aerodromes see PARA 178.

11 As to the meaning of 'to land' see PARA 226 note 5; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2).

12 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 19(1).

UPDATE

388-395 Certificates as to Aircraft Engine Emissions

SI 2002/798 replaced by Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133: see PARA 399-405.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(iv) Certificates as to Aircraft Engine Emissions/395. Offences in relation to emissions certification.

395. Offences in relation to emissions certification.

Any contravention of any of the statutory provisions concerning emissions certification¹ is an offence punishable by a fine². Any such contravention in relation to an aeroplane is deemed to be the responsibility of the operator of that aeroplane and its commander unless he proves that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it³. If it is proved that an act or omission of any person which would otherwise have been a contravention by that person was due to any cause not avoidable by the exercise of reasonable care by that person, the act or omission is deemed not to be a contravention by that person⁴.

Where an offence is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly⁵.

¹ ie the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, Pt III (arts 8-13): see PARA 388 et seq.

² Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 21(3). In general such an offence is punishable by a fine not exceeding level 3 on the standard scale (art 21(3)), although contravention of art 8(2) (aircraft not to take off or land in United Kingdom unless certified as compliant with fuel venting requirements: see PARA 388), art 9(2) (aircraft not to take off or land in United Kingdom unless certified as compliant with smoke emission requirements: see PARA 389), art 10(2) (aircraft not to take off or land in United Kingdom unless certified as compliant with unburned hydrocarbons, carbon monoxide and oxides of nitrogen emission requirements: see PARA 390), art 18(2) (failure to comply with direction not to fly: see PARA 394) or art 20 (obstruction of persons enforcing emissions certification requirements: see PARA 394) is punishable by a fine not exceeding the statutory maximum (art 21(4)). As to the standard scale see PARA 50 note 8. As to the statutory maximum see PARA 43 note 12.

³ Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 21(1). This is without prejudice to the liability of any other person for that contravention: art 21(1).

⁴ Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 21(2).

⁵ Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 22(1). Where the affairs of a body corporate are managed by its members, this provision applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: art 22(2).

UPDATE

388-395 Certificates as to Aircraft Engine Emissions

SI 2002/798 replaced by Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133: see PARA 399-405.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(v) Noise Certificates/A. INTRODUCTION/396. Introduction.

(v) Noise Certificates

A. INTRODUCTION

396. Introduction.

There are two statutory regimes currently in force governing aircraft noise certification. The first is established under the Aeroplane Noise Regulations 1999¹. This legislation makes provision implementing European Community obligations on the limitation of noise emissions from certain aircraft², establishing standards with which propeller-driven aircraft and civil subsonic jet aeroplanes must comply and making provision for the certification of compliance. The second statutory regime exists under the Air Navigation (Environmental Standards) Order 2002³, which establishes noise emission standards in connection with supersonic aeroplanes, microlight aeroplanes, and helicopters, and makes provision for the certification of compliance.

1 Ie the Aeroplane Noise Regulations 1999, SI 1999/1452: see PARA 397 et seq.

2 See EC Council Directive 80/51 (OJ L018, 24.1.80, p 26) on the limitation of noise emissions from subsonic aircraft; EC Council Directive 89/629 (OJ L363, 13.12.89, p 27) on the limitation of noise emission from civil subsonic jet aeroplanes; and EC Council Directive 92/14 (OJ L076, 23.3.92, p 21) on the limitation of the operation of aeroplanes covered by Part II, Chapter 2, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988).

3 Ie the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, Pt II (arts 4-7): see PARA 399 et seq.

UPDATE

396 Introduction

NOTE 3--SI 2002/798 Pt II now Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, Pt 2 (arts 4-13).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(v) Noise Certificates/B. REQUIREMENT FOR NOISE CERTIFICATES/397. Requirements for civil propeller-driven aeroplanes.

B. REQUIREMENT FOR NOISE CERTIFICATES

397. Requirements for civil propeller-driven aeroplanes.

No civil propeller-driven aeroplane¹ registered in the United Kingdom² may be used in the territories of member states of the European Community or EEA states³ or Switzerland unless there is in force in respect of that aeroplane a noise certificate⁴ granted by the Civil Aviation Authority ('CAA')⁵ certifying that the aircraft meets the applicable requirements as to noise⁶.

No civil propeller-driven aeroplane registered otherwise than in the United Kingdom, Gibraltar or another member state or EEA state or Switzerland may land or take off in the United Kingdom unless there is in force in respect of that aeroplane a noise certificate granted by the competent authority of the state of registry on the basis of satisfactory evidence that the aeroplane complies with requirements which are at least as stringent as those which the aeroplane, were it on the register of the United Kingdom, would be required to meet by virtue of the applicable United Kingdom requirements⁷.

The noise certificate applicable to civil propeller-driven aeroplanes (wherever registered) must provide at least:

- 312 (1) the state of registry and registration mark of the aeroplane⁸;
- 313 (2) the manufacturer's serial number⁹;
- 314 (3) the manufacturer's type and model designation¹⁰;
- 315 (4) a statement of any additional modifications incorporated for the purpose of compliance with the applicable noise certification standards¹¹;
- 316 (5) the maximum mass at which compliance with the applicable noise certification standards has been demonstrated¹²; and
- 317 (6) in certain cases¹³, the noise level or levels and their 90 per cent confidence limits at the reference point or points for which compliance with the applicable noise certification standards has been demonstrated¹⁴.

1 'Aeroplane' means an aeroplane in respect of which a certificate of airworthiness is in force: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 3(1). As to certificates of airworthiness see PARA 376 et seq. The noise certification requirements for civil propeller-driven aeroplanes apply to aeroplanes falling within one of the categories set out in the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742), Annex 16, Vol I (1st Edn, 1981): Aeroplane Noise Regulations 1999, SI 1999/1452, reg 4(1). As to the types of propeller-driven aeroplanes which are required to hold noise certificates see reg 5(3). As to the Chicago Convention see PARA 2 et seq. As to the Annexes to the Chicago Convention see PARA 6.

2 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 'EEA state' means a state, other than a member state, which is a contracting party to the EEA Agreement; and 'EEA Agreement' means the Agreement on the European Economic Area (Oporto, 2 May 1992; Cm 2073 (OJ L1, 3.1.94, p 3)) as adjusted by the Protocol (Brussels, 17 March 1993; Cm 2183 (OJ L1, 3.1.94, p 572)): see the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 3(1).

4 'Noise certificate' means a document issued or validated by a state or by a competent authority of a state attesting noise certification in respect of an aeroplane either by way of a separate certificate or a statement contained in another document approved by the state of registry of the aeroplane and required by that state to be carried in the aeroplane: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 3(1).

A noise certificate granted by the competent authority of Switzerland, a member state or an EEA state other than the United Kingdom attesting noise certification in respect of an aeroplane registered in the territory of that state to the effect that the aeroplane complies with requirements which are at least equal to the applicable standards specified in the Chicago Convention, Annex 16, Vol I (1st Edn, 1981), Pt II, Ch 2, Ch 3, Ch 5 or Ch 6 is recognised as valid for these purposes: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 19(1) (amended by SI 2004/1256). Exemptions granted by Switzerland, a member state or an EEA state other than the United Kingdom pursuant to EC Council Directive 89/629 (OJ L363, 13.12.89, p 27) on the limitation of noise emission from civil subsonic jet aeroplanes art 4 or art 5, must also be recognised as valid: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 19(2) (amended by SI 2004/1256).

5 As to the CAA see PARA 50 et seq.

6 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 4(1), (2) (reg 4(2) amended by SI 2004/1256). For the applicable requirements see the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 4(2)(a)-(j), 5(1), (2) (reg 5(2) amended by SI 2004/1256). For exclusions and exemptions from the noise certification requirements see PARA 401.

7 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 7(1) (amended by SI 2004/1256). The applicable United Kingdom requirements are those set out in the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 4, 5: see the text and notes 1-6. For exclusions and exemptions from the noise certification requirements see PARA 401.

8 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 15(a). As to registration marks see PARA 374.

9 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 15(b).

10 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 15(c).

11 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 15(d).

12 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 15(e).

13 Ie in the case of aeroplanes for which application or certification is submitted on or after 6 October 1977.

14 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 15(f).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(v) Noise Certificates/B. REQUIREMENT FOR NOISE CERTIFICATES/398. Requirements for civil subsonic jet aeroplanes.

398. Requirements for civil subsonic jet aeroplanes.

In general, no civil subsonic jet aeroplane¹ registered in the United Kingdom² may be used in the territories of member states of the European Community or EEA states³ or Switzerland unless there is in force in respect of that aeroplane a noise certificate⁴ granted by the Civil Aviation Authority ('CAA')⁵ certifying that the aircraft meets the applicable requirements as to noise⁶.

In general, no civil subsonic jet aeroplane which is registered otherwise than in the United Kingdom, Gibraltar, Switzerland or another member state or EEA state may land⁷ or take off in the United Kingdom unless there is in force in respect of that aeroplane a noise certificate granted by the competent authority of the state of registry certifying that the aeroplane complies with requirements which are at least equal to the applicable United Kingdom requirements⁸.

The noise certificate generally applicable to civil subsonic jet aeroplanes registered in the United Kingdom must provide at least:

- 318 (1) the state of registry and registration mark of the aeroplane⁹;
- 319 (2) the manufacturer's serial number¹⁰;
- 320 (3) the manufacturer's type and model designation¹¹;
- 321 (4) a statement of any additional modifications incorporated for the purpose of compliance with the applicable noise certification standards¹²;
- 322 (5) the maximum mass at which compliance with the applicable noise certification standards has been demonstrated¹³; and
- 323 (6) in certain cases¹⁴, the noise level or levels and their 90 per cent confidence limits at the reference point or points for which compliance with the applicable noise certification standards has been demonstrated¹⁵.

There are also restrictions on the operation at any United Kingdom airport of civil subsonic passenger jet aeroplanes, wherever registered, without noise certificates¹⁶.

1 As to the meaning of 'aeroplane' see PARA 397 note 1. As to the aeroplanes to which the noise certification requirements for United Kingdom-registered civil subsonic jet aeroplanes apply see the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 8(1), (3), 9(1), (3), 10(1), (3) (reg 10(3) amended by SI 2004/1256).

2 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 As to the meaning of 'EEA state' see PARA 397 note 3.

4 As to the meaning of 'noise certificate' see PARA 397 note 4.

5 As to the CAA see PARA 50 et seq.

6 Aeroplane Noise Regulations 1999, SI 1999/1452, regs 8(1), (2), 9(1), (2), 10(1), (2) (regs 8(2), 9(2), 10(2) amended by SI 2004/1256). For the applicable requirements see the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 8(2), 9(2), 10(2), 30-32 (regs 8(2), 9(2), 10(2), 30 amended by SI 2004/1256). For exclusions and exemptions from the noise certification requirements see PARA 401.

7 As to the meaning of 'to land' see PARA 226 note 5.

8 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 11(1), (2) (reg 11(2) amended by SI 2004/1256). The applicable United Kingdom requirements are those referred to in the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 8-10: see the text and notes 1-6. For exclusions and exemptions from the noise certification requirements see PARA 401.

9 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 15(a). As to registration marks see PARA 374.

10 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 15(b).

11 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 15(c).

12 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 15(d).

13 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 15(e).

14 Ie in the case of aeroplanes for which application or certification is submitted on or after 6 October 1977.

15 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 15(f).

16 See the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 12-14, Schedule (regs 12-14 amended by SI 2004/1256; Aeroplane Noise Regulations 1999, SI 1999/1452, Schedule amended by SI 1999/2253). See also the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 24, which provides that the noise certification requirements contained in reg 12(2) may not operate so as to require the deletion from the United Kingdom register of aeroplanes which do not meet the applicable standards at an annual rate equivalent to more than 10% of the total civil subsonic jet fleet of a community air carrier. For procedural requirements in connection with this exemption see reg 27(3) (amended by SI 2004/1256). For these purposes, 'Community air carrier' means an air carrier with a valid operating licence granted by a member state or EEA state or Switzerland in accordance with EC Council Regulation 2407/92 (OJ L240, 24.8.92, p 1) on licensing air carriers (see PARA 98), as that Regulation has effect in accordance with the EEA Agreement, as amended by the Decision of the EEA Joint Committee No 7/94 of 21 March 1994, and in accordance with the Decision of the Council, and of the Commission as regards the Agreement on Scientific and Technological Co-operation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation, in so far as it applies to the Agreement between the European Community and the Swiss Confederation on Air Transport; 'air carrier' means an air transport undertaking with a valid operating licence; and 'operating licence' means an authorisation granted to an undertaking permitting it to carry out carriage by air of passengers, mail and/or cargo for remuneration and/or hire: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 3(1) (amended by SI 2004/1256). As to operating licences see PARA 101.

For exclusions and exemptions from the noise certification requirements generally see PARA 401.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(v) Noise Certificates/B. REQUIREMENT FOR NOISE CERTIFICATES/399. Requirements for supersonic aeroplanes, microlights and helicopters.

399. Requirements for supersonic aeroplanes, microlights and helicopters.

In general, no supersonic aeroplane¹, microlight aeroplane², or helicopter³ may land⁴ or take off in the United Kingdom⁵ unless there is a noise certificate in force in respect of it⁶, and any conditions subject to which the certificate was issued or validated are complied with⁷.

1 As to the meaning of 'supersonic aeroplane' see PARA 389 note 2. As to the types of supersonic aeroplane required to hold noise certification see the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 4(1), Sch 2.

2 'Microlight aeroplane' means an aeroplane designed to carry not more than two persons which has a maximum total weight authorised not exceeding:

- 35 (1) 300 kg for a single seat landplane (or 390 kg for a single seat landplane in respect of which a United Kingdom permit to fly or certificate of airworthiness was in force prior to 1 January 2003);
- 36 (2) 450 kg for a two seat landplane;
- 37 (3) 330 kg for a single seat amphibian or floatplane; or
- 38 (4) 495 kg for a two seat amphibian or floatplane,

and which has either a wing loading at the maximum total weight authorised not exceeding 25 kg per square metre or a stalling speed at the maximum total weight authorised not exceeding 35 knots calibrated airspeed: Air Navigation Order 2005, SI 2005/1970, art 155(1); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(1). The noise certification requirements apply to all microlight aeroplanes: Sch 2. As to the meaning of 'maximum total weight authorised' see PARA 363 note 9; definition applied by art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2). As to certificates of airworthiness see PARA 376 et seq.

3 As to the types of helicopter required to hold noise certification see the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, Sch 2.

4 As to the meaning of 'to land' see PARA 226 note 5; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2).

5 As to the meaning of 'United Kingdom' see PARA 30 note 1.

6 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 4(2)(a). The general requirement is for a noise certificate issued by the Civil Aviation Authority ('CAA') in accordance with art 5 (see PARA 400): art 4(2)(a)(i). As to the CAA see PARA 50 et seq. However, in the case of a microlight aeroplane, the certificate may be issued or validated by the competent authority of the country in which the microlight is registered, being an EEA state which applies standards which are substantially equivalent to those required for the issue of a noise certificate by the CAA (art 4(2)(a)(ii)(aa)), or may be issued or validated by the competent authority of the country in which the microlight is registered, being a country prescribed as one which applies standards which in the opinion of the Secretary of State are substantially equivalent to those required for the issue of a noise certificate by the CAA (art 4(2)(a)(ii)(bb)). In addition, except in the case of a microlight aeroplane, the certificate may be issued or validated by the competent authority of the contracting state in which the aircraft is registered in accordance with the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) (see PARA 2): Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 4(2)(a)(iii). Contravention of art 4(2) is an offence: see PARA 405. As to the meaning of 'competent authority' see PARA 415 note 9; and as to the meaning of 'EEA state' see PARA 397 note 3 (definitions applied by art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2)). As to aircraft registered in other states see the Chicago Convention art 17 et seq; and PARA 358. 'Prescribed' means prescribed by regulations made by the Secretary of State under the Air Navigation (Environmental Standards) Order 2002, SI 2002/798: art 3(1). At the date at which this volume states the law no such regulations had been made.

7 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 4(2)(b). No aircraft (other than a microlight aeroplane) first registered in the United Kingdom on or after 1 August 1986, in respect of which by virtue of the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, a noise certificate is required to be carried, may fly unless the flight manual in respect of that aircraft includes the information specified in the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742), Annex 16, Vol I (3rd Edn, July 1993), Pt II, Ch 1: see the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, arts 3(1), 6. As to the Annexes to the Chicago Convention see PARA 6. As to the meaning of 'flight manual' see PARA 376 note 8.

For exclusions and exemptions from the noise certification requirements see PARA 401.

UPDATE

399-405 Requirements for supersonic aeroplanes, microlights and helicopters ... Offences in relation to noise certificates

SI 2002/798 replaced: Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, which applies to specified categories of United Kingdom registered aircraft ('non-EASA aircraft') that are not subject to European Parliament and EC Council Regulation 216/2008 (OJ L79, 19.3.2008, p 1) (the 'Basic EASA Regulation'). As to Regulation 216/2008 see PARAS 28, 375. 'EASA' means the European Aviation Safety Agency (see PARA 24) and 'non-EASA aircraft' means an aircraft that is not required by virtue of Regulation 216/2008 and any implementing rules adopted by the EC Commission in accordance with that regulation to hold an EASA certificate of airworthiness (see PARA 376), an EASA restricted certificate of airworthiness (see PARA 376) or an EASA permit to fly (see PARA 385): SI 2008/3133 art 3(1). SI 2008/3133 makes separate provision for noise certification for microlight aeroplanes (arts 4, 5, 8) and for United Kingdom registered state aircraft and research aircraft with or without an EASA equivalent type (arts 6, 7, 9, 10). 'State aircraft' means an aircraft engaged in military, customs, police or similar services and 'research aircraft' means an aircraft which falls within Regulation 216/2008 Annex II category(b): art 3(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(v) Noise Certificates/C. PROVISIONS AS TO CERTIFICATION/400. Certification of compliance with noise requirements.

C. PROVISIONS AS TO CERTIFICATION

400. Certification of compliance with noise requirements.

The Civil Aviation Authority ('CAA')¹ must issue a noise certificate² in respect of any aircraft registered in the United Kingdom³ which is required to comply with the noise certification requirements in respect of any relevant United Kingdom-registered civil propeller-driven or subsonic jet aeroplane⁴, and applicable to supersonic aeroplanes⁵, microlight aeroplanes⁶ and helicopters⁷, if it is satisfied that the aircraft in question complies with the applicable standards⁸ in relation to the noise made by it⁹. The CAA must issue every noise certificate subject to a condition as to the maximum total weights at which the aircraft may land¹⁰ or take off and may issue such a certificate subject to such other conditions relating to standards as to noise as it thinks fit¹¹. In general, and unless it is suspended or revoked¹², a noise certificate remains in force without limit of time¹³.

1 As to the CAA see PARA 50 et seq.

2 In connection with supersonic aeroplanes, microlights and helicopters, 'noise certificate' means a certificate issued by the CAA in accordance with the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 5, or a certificate or other document issued or validated in accordance with art 4 (see PARA 399): art 3(1). As to the meaning of 'noise certificate' in connection with civil propeller-driven aeroplanes and civil subsonic jet aeroplanes see PARA 397 note 4.

3 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 As to the meaning of 'aeroplane' see PARA 397 note 1. As to the relevant United Kingdom-registered civil propeller-driven or subsonic jet aeroplanes for noise certification purposes see the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 4, 5, 8-10, 12-14; and PARA 398.

5 See further PARA 399. As to the meaning of 'supersonic aeroplane' see PARA 389 note 2.

6 See further PARA 399. As to the meaning of 'microlight aeroplane' see PARA 399 note 2.

7 See further PARA 399.

8 As to the applicable standards in connection with United Kingdom-registered civil propeller-driven or subsonic jet aeroplanes see the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 4, 5, 8-10, 12-14; and PARA 398. As to the applicable standards in connection with supersonic aeroplanes, microlights and helicopters see the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, Schs 2, 3; and PARA 399.

9 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 16(1); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 5(1)(a). An applicant for a certificate relating to a supersonic aeroplane, a microlight or a helicopter must furnish such evidence and submit the aircraft to such flying trials and other tests as the CAA may require: art 5(1)(b). Procedural provisions in connection with a refusal to grant a noise certificate are set out in the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 26: see reg 26(1)(a).

10 As to the meaning of 'to land' see PARA 226 note 5.

11 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 16(3); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 5(2). This requirement does not apply in respect of a microlight aeroplane.

12 As to the powers of the CAA to suspend or revoke see PARA 402.

13 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 16(4); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 5(3). A noise certificate ceases to be valid if the aircraft or any part of it is modified in any way which affects the ability of the aircraft to comply with the required noise standards, except if such modification is in a manner and with material of a type approved by the CAA for these purposes either generally or in relation to a class of aircraft or to a particular aircraft: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 16(5)(a); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 5(4)(a). A noise certificate will also cease to be valid until the satisfactory completion of any inspection or test of the aircraft required by the CAA to be made for the purpose of ascertaining whether the aircraft continues to comply with the required noise standards: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 16(5)(b); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 5(4)(b). For the purposes of determining the standard applicable to a United Kingdom-registered propeller-driven aeroplane where the interval between the application for a certificate of airworthiness for a prototype aeroplane and the first issue of a certificate for an aeroplane of that type, or the application to modify a certificate of airworthiness for a prototype aeroplane and the first issue of a certificate for an aeroplane of that type as modified, exceeds five years, the date on which the application was made is deemed to be five years before the date of the first issue of the certificate: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 16(2). For the purposes of determining the noise standard applicable to a supersonic aeroplane, a microlight or a helicopter where the interval between the application for a type certificate and the first issue of a certificate of airworthiness for an aircraft of that type, or the application for a change of type design and the first issue of a certificate of airworthiness for an aircraft of that type as modified, exceeds five years, the date on which the application for a type certificate or a change of type design was made will, unless the CAA in a particular case otherwise directs, be deemed to be five years before the date of the first issue of the certificate of airworthiness: Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 5(5). As to certificates of airworthiness see PARA 376 et seq.

UPDATE

399-405 Requirements for supersonic aeroplanes, microlights and helicopters ... Offences in relation to noise certificates

SI 2002/798 replaced: Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, which applies to specified categories of United Kingdom registered aircraft ('non-EASA aircraft') that are not subject to European Parliament and EC Council Regulation 216/2008 (OJ L79, 19.3.2008, p 1) (the 'Basic EASA Regulation'). As to Regulation 216/2008 see PARAS 28, 375. 'EASA' means the European Aviation Safety Agency (see PARA 24) and 'non-EASA aircraft' means an aircraft that is not required by virtue of Regulation 216/2008 and any implementing rules adopted by the EC Commission in accordance with that regulation to hold an EASA certificate of airworthiness (see PARA 376), an EASA restricted certificate of airworthiness (see PARA 376) or an EASA permit to fly (see PARA 385): SI 2008/3133 art 3(1). SI 2008/3133 makes separate provision for noise certification for microlight aeroplanes (arts 4, 5, 8) and for United Kingdom registered state aircraft and research aircraft with or without an EASA equivalent type (arts 6, 7, 9, 10). 'State aircraft' means an aircraft engaged in military, customs, police or similar services and 'research aircraft' means an aircraft which falls within Regulation 216/2008 Annex II category(b): art 3(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(v) Noise Certificates/C. PROVISIONS AS TO CERTIFICATION/401. Application of, and exclusions and exemptions from, noise certification requirements.

401. Application of, and exclusions and exemptions from, noise certification requirements.

The noise certification requirements¹ apply, in general, to Crown aircraft and to visiting forces².

The requirements applicable to civil propeller-driven aeroplanes³ and civil subsonic jet aeroplanes generally apply to such aeroplanes, wherever registered, whenever they are operating in member states of the European Community or EEA states or Switzerland⁴. There are certain exemptions from these requirements, namely:

- 324 (1) exemptions⁵ may be granted, in exceptional individual cases, to permit the temporary use of propeller-driven or civil subsonic passenger jet aeroplanes which could not otherwise be lawfully operated within the terms of the noise certification requirements⁶;
- 325 (2) certain limited exemptions⁷ may be granted in respect of propeller-driven aeroplanes designed and manufactured in small numbers and used for the transportation of aeronautical industry products of exceptional sizes⁸;
- 326 (3) an exemption⁹ may be granted in respect of a civil subsonic passenger jet aeroplane which replaces one which has been accidentally destroyed¹⁰;
- 327 (4) exemptions¹¹ may be granted in respect of civil subsonic passenger jet aeroplanes which are of historic interest¹²;
- 328 (5) an exemption¹³ may be granted in respect of a civil subsonic passenger jet aeroplane where an air carrier¹⁴ demonstrates that the pursuit of its operations would otherwise be adversely affected to an unreasonable extent¹⁵;
- 329 (6) an exemption¹⁶ may be granted in respect of a civil subsonic passenger jet aeroplane to permit the temporary use of that aircraft at a United Kingdom airport for the purpose of exceptional operations or alterations, repair or maintenance¹⁷.

The requirements applicable to supersonic aeroplanes, microlights¹⁸ and helicopters apply in relation to United Kingdom-registered aircraft¹⁹ wherever they may be and to other aircraft whenever they are in the United Kingdom²⁰. There are also a number of exemptions from these requirements. The Civil Aviation Authority ('CAA')²¹ may, after consultation with the Secretary of State²², exempt from any of those requirements any aircraft or persons or classes of aircraft or persons, either absolutely or subject to such conditions as it thinks fit²³. In addition, a supersonic aeroplane, microlight or helicopter without a certificate of airworthiness²⁴ flying in accordance with the 'A' conditions or 'B' conditions set out in the Air Navigation Order 2005²⁵ is not required to comply with the noise certification requirements²⁶, and neither is such an aircraft landing²⁷ or taking off at a prescribed place²⁸.

In each of the cases listed above, the CAA may grant the exemption only after consultation with the Secretary of State²⁹. In addition, the CAA must grant an exemption from the restrictions on the operation at United Kingdom airports of civil subsonic passenger jet aeroplanes without noise certificates³⁰ in respect of any aircraft which are in the process of being converted in order to meet the applicable noise standards³¹. The CAA may, if it thinks fit, provisionally suspend any exemption granted by it in relation to a civil propeller-driven aeroplane or a civil subsonic jet aeroplane³² pending inquiry into or consideration of the case³³; and, after sufficient ground being shown to its satisfaction after due inquiry, it may revoke any such exemption³⁴. Where an exemption is revoked, the holder or any person having the

possession or custody of it must surrender it to the CAA within a reasonable time after being required to do so³⁵.

1 le the provisions of the Aeroplane Noise Regulations 1999, SI 1999/1452 (see PARA 396 et seq) and the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, Pt III (arts 8-13) (see PARA 388 et seq).

2 See the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 23. The Aeroplane Noise Regulations 1999, SI 1999/1452, refer throughout to civil propeller-driven aeroplanes and civil subsonic jet aeroplanes and accordingly do not apply to Crown or military aircraft.

3 As to the meaning of 'aeroplane' for these purposes see PARA 397 note 1.

4 See the Aeroplane Noise Regulations 1999, SI 1999/1452 (amended by SI 2004/1256).

5 le: in relation to United Kingdom-registered propeller-driven aircraft, exemptions from the requirements of the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 4(2) or reg 5(2) (see PARA 397); in relation to foreign-registered propeller-driven aircraft, exemptions from the requirements of reg 7(1) (see PARA 397); and in relation to civil subsonic passenger jet aeroplanes, exemption from the requirements of reg 8(2) or reg 9(2) (see PARA 398). Procedural provisions in connection with a refusal to grant an exemption are set out in reg 26: see reg 26(1)(a).

6 See the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 6(1), 7(2), 25(1). Such an exemption may permit the temporary use of United Kingdom-registered propeller-driven or subsonic passenger jet aircraft in the United Kingdom and Gibraltar, and of foreign-registered propeller-driven aircraft in the United Kingdom: regs 6(1), 7(2), 25(1).

7 le, in relation to United Kingdom-registered aircraft, exemption from the requirements of the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 4(2) (see PARA 397); and in relation to foreign-registered aircraft, exemptions from the requirements of reg 7(1) (see PARA 397).

8 See the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 6(2), 7(3) (reg 6(2) amended by SI 2004/1256). For procedural requirements in connection with exemptions under the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 6(2), 7(3) see reg 27(1).

9 le an exemption from the requirements of the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 10(2) (see PARA 398).

10 See the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 21(1). This exemption is only applicable to United Kingdom-registered aircraft proposed to be operated in the territory of member states or EEA states or Switzerland: see reg 10(2) (amended by SI 2004/1256). The operator must demonstrate that he is unable to find a replacement aeroplane that meets the noise certification requirements (Aeroplane Noise Regulations 1999, SI 1999/1452, reg 21(2)(a)), and the replacement aeroplane must be registered in the United Kingdom within one year of the aircraft it replaces being destroyed (reg 21(2)(b)). For procedural requirements in connection with exemptions under reg 21 see reg 27(2) (amended by SI 2004/1256). As to the meaning of 'EEA state' see PARA 397 note 3.

11 le exemptions from the requirements of the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 10(2), reg 12(2), or reg 14(2) (see PARA 398).

12 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 22. For procedural requirements in connection with exemptions under reg 22 see reg 27(2), (3) (amended by SI 2004/1256).

13 le an exemption from the requirements of the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 12(2) (b) (see PARA 398).

14 As to the meaning of 'air carrier' see PARA 398 note 16.

15 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 23. For procedural requirements in connection with exemptions under reg 23 see reg 27(3) (amended by SI 2004/1256).

16 le an exemption from the requirements of the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 12(2) or reg 14(2): see PARA 398.

17 See the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 25(2), (3).

18 As to the meaning of 'microlight aeroplane' see PARA 399 note 2.

- 19 As to registration see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.
- 20 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 24. As to these requirements see PARA 399.
- 21 As to the CAA see PARA 50 et seq.
- 22 As to the Secretary of State see PARA 33.
- 23 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 7.
- 24 As to certificates of airworthiness see PARA 376 et seq.
- 25 As to the 'A' conditions and the 'B' conditions see the Air Navigation Order 2005, SI 2005/1970, art 8(2) (d), Sch 3 Pt A; and PARAS 378-379.
- 26 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 4(3)(a); Interpretation Act 1978 ss 17(2)(a), 23(1), (2).
- 27 As to the meaning of 'to land' see PARA 226 note 5.
- 28 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 4(3)(b); Interpretation Act 1978 s 17(2). 'Prescribed' means prescribed by regulations made by the Secretary of State under the Air Navigation (Environmental Standards) Order 2002, SI 2002/798: art 3(1). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 33.
- 29 See the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 6(1), (2), 7(2), (3), 21(1), 22, 23, 25(1) (reg 6(2) amended by SI 2004/1256).
- 30 Is an exemption from the requirements of the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 12(2): see PARA 398.
- 31 See the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 20. For procedural requirements in connection with exemptions under reg 20 see reg 27(3) (amended by SI 2004/1256).
- 32 Is any exemption granted by the CAA under the Aeroplane Noise Regulations 1999, SI 1999/1452.
- 33 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 17(1).
- 34 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 17(1). Procedural provisions in connection with revocations of exemptions are set out in reg 26: see reg 26(1)(c).
- 35 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 17(2).

UPDATE

399-405 Requirements for supersonic aeroplanes, microlights and helicopters ... Offences in relation to noise certificates

SI 2002/798 replaced: Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, which applies to specified categories of United Kingdom registered aircraft ('non-EASA aircraft') that are not subject to European Parliament and EC Council Regulation 216/2008 (OJ L79, 19.3.2008, p 1) (the 'Basic EASA Regulation'). As to Regulation 216/2008 see PARAS 28, 375. 'EASA' means the European Aviation Safety Agency (see PARA 24) and 'non-EASA aircraft' means an aircraft that is not required by virtue of Regulation 216/2008 and any implementing rules adopted by the EC Commission in accordance with that regulation to hold an EASA certificate of airworthiness (see PARA 376), an EASA restricted certificate of airworthiness (see PARA 376) or an EASA permit to fly (see PARA 385): SI 2008/3133 art 3(1). SI 2008/3133 makes separate provision for noise certification for microlight aeroplanes (arts 4, 5, 8) and for United Kingdom registered state aircraft and research aircraft with or without an EASA equivalent type (arts 6, 7, 9, 10). 'State aircraft' means an aircraft engaged in

military, customs, police or similar services and 'research aircraft' means an aircraft which falls within Regulation 216/2008 Annex II category(b): art 3(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(v) Noise Certificates/C. PROVISIONS AS TO CERTIFICATION/402. Review of noise certificates.

402. Review of noise certificates.

The Civil Aviation Authority ('CAA')¹ may, if it thinks fit, provisionally suspend a noise certificate² (or, in the case of a certificate issued in relation to a civil propeller-driven aeroplane³ or a civil subsonic jet aeroplane, provisionally vary the certificate) pending inquiry into or consideration of the case⁴; and, after sufficient ground being shown to its satisfaction after due inquiry, it may revoke, vary or (in the case of a certificate issued in relation to a supersonic aeroplane, microlight aeroplane⁵, or helicopter) suspend any such certificate⁶. Where a certificate is revoked, suspended or varied, the holder or any person having the possession or custody of it must surrender it to the CAA within a reasonable time after being required to do so⁷. The breach of any condition subject to which a certificate has been granted renders it invalid during the continuance of the breach⁸.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'noise certificate' in relation to a civil propeller-driven aeroplane or a civil subsonic jet aeroplane see PARA 397 note 4. As to the meaning of 'noise certificate' in relation to a supersonic aeroplane, microlight aeroplane, or helicopter see PARA 400 note 2.

3 As to the meaning of 'aeroplane' see PARA 397 note 1.

4 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 17(1); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 16(1).

5 As to the meaning of 'microlight aeroplane' see PARA 399 note 2.

6 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 17(1); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 16(2). Procedural provisions in connection with revocations and variations of noise certificates are set out in the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 26: see reg 26(1)(b).

7 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 17(2); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 16(3).

8 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 17(3); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 16(4).

UPDATE

399-405 Requirements for supersonic aeroplanes, microlights and helicopters ... Offences in relation to noise certificates

SI 2002/798 replaced: Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, which applies to specified categories of United Kingdom registered aircraft ('non-EASA aircraft') that are not subject to European Parliament and EC Council Regulation 216/2008 (OJ L79, 19.3.2008, p 1) (the 'Basic EASA Regulation'). As to Regulation 216/2008 see PARAS 28, 375. 'EASA' means the European Aviation Safety Agency (see PARA 24) and 'non-EASA aircraft' means an aircraft that is not required by virtue of Regulation 216/2008 and any implementing rules adopted by the EC Commission in accordance with that regulation to hold an EASA certificate of airworthiness (see PARA 376), an EASA restricted certificate of airworthiness (see PARA 376) or an EASA permit to fly (see PARA 385): SI 2008/3133 art 3(1). SI 2008/3133

makes separate provision for noise certification for microlight aeroplanes (arts 4, 5, 8) and for United Kingdom registered state aircraft and research aircraft with or without an EASA equivalent type (arts 6, 7, 9, 10). 'State aircraft' means an aircraft engaged in military, customs, police or similar services and 'research aircraft' means an aircraft which falls within Regulation 216/2008 Annex II category(b): art 3(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(v) Noise Certificates/C. PROVISIONS AS TO CERTIFICATION/403. Carriage and production of noise certificates.

403. Carriage and production of noise certificates.

A United Kingdom-registered¹ civil propeller-driven or subsonic jet aeroplane² may not be used in the territories of member states of the European Community or EEA states³ or in Switzerland unless the applicable noise certificate⁴ is carried on board⁵. A civil propeller-driven or subsonic jet aeroplane registered otherwise than in the United Kingdom, Gibraltar, or another member state or EEA state⁶, and a civil subsonic passenger jet aeroplane wherever registered, subject to the restrictions on the operation at any United Kingdom airport of such aeroplanes⁷, may not take off from or land in the United Kingdom unless the applicable noise certificate⁸ is carried on board⁹.

Every United Kingdom-registered supersonic aeroplane, microlight aeroplane¹⁰ and helicopter must, when in flight¹¹, carry every noise certificate¹² which is required¹³ to be in force in respect of that aircraft¹⁴.

It is further provided that no aircraft may land or take off in the United Kingdom unless it carries every noise certificate which it is required to carry under the law of the country in which it is registered¹⁵.

330 The commander or operator of an aircraft must, on the request of the Civil Aviation Authority ('CAA')¹⁶ or an authorised person¹⁷ and within a reasonable time following such request, produce a noise certificate¹⁸.

1 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 Ie an aeroplane to which the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 4, 5, 8, 9 or 10 applies. As to such aeroplanes see PARAS 397-398. As to the meaning of 'aeroplane' see PARA 397 note 1.

3 As to the meaning of 'EEA state' see PARA 397 note 3.

4 Ie the noise certificate required to be in force in respect of that aeroplane by the Aeroplane Noise Regulations 1999, SI 1999/1452: see PARA 396 et seq. As to the meaning of 'noise certificate' in relation to a civil propeller-driven or subsonic jet aeroplane see PARA 397 note 4.

5 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 18(1) (amended by SI 2004/1256). Contravention of the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 18 is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale: reg 31(3). As to the standard scale see PARA 50 note 8. As to offences see further regs 31(1), (2), (4), 32.

6 Ie an aeroplane to which the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 7 or reg 11 applies. As to such aeroplanes see PARAS 397-398.

7 Ie an aeroplane to which the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 12 or reg 14 applies. As to such aeroplanes see PARA 398.

8 Ie the noise certificate required to be in force in respect of that aeroplane by the Aeroplane Noise Regulations 1999, SI 1999/1452: see PARA 397 et seq.

9 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 18(2).

10 As to the meaning of 'microlight aeroplane' see PARA 399 note 2.

11 As to the meaning of 'flight' see PARA 530; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2).

12 As to the meaning of 'noise certificate' in relation to a supersonic aeroplane, microlight aeroplane or helicopter see PARA 400 note 2.

13 Is required by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, Pt II (arts 4-7): see PARA 399 et seq.

14 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 14(2)(a). This requirement is subject to the proviso that if the flight is intended to begin and end at the same aerodrome in the United Kingdom, the certificate may be kept at that aerodrome instead of being carried in the aircraft: art 14(2)(b).

15 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 14(1). This requirement does not include any certificate which is required to be carried under the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 18(1) or reg 18(2) (see the text and notes 1-9): Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 14(1).

16 As to the CAA see PARA 50 et seq.

17 As to the meaning of 'authorised person' see PARAS 394 note 2, 404 note 2.

18 See the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 18(3); and the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 15.

UPDATE

399-405 Requirements for supersonic aeroplanes, microlights and helicopters ... Offences in relation to noise certificates

SI 2002/798 replaced: Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, which applies to specified categories of United Kingdom registered aircraft ('non-EASA aircraft') that are not subject to European Parliament and EC Council Regulation 216/2008 (OJ L79, 19.3.2008, p 1) (the 'Basic EASA Regulation'). As to Regulation 216/2008 see PARAS 28, 375. 'EASA' means the European Aviation Safety Agency (see PARA 24) and 'non-EASA aircraft' means an aircraft that is not required by virtue of Regulation 216/2008 and any implementing rules adopted by the EC Commission in accordance with that regulation to hold an EASA certificate of airworthiness (see PARA 376), an EASA restricted certificate of airworthiness (see PARA 376) or an EASA permit to fly (see PARA 385): SI 2008/3133 art 3(1). SI 2008/3133 makes separate provision for noise certification for microlight aeroplanes (arts 4, 5, 8) and for United Kingdom registered state aircraft and research aircraft with or without an EASA equivalent type (arts 6, 7, 9, 10). 'State aircraft' means an aircraft engaged in military, customs, police or similar services and 'research aircraft' means an aircraft which falls within Regulation 216/2008 Annex II category(b): art 3(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(v) Noise Certificates/C. PROVISIONS AS TO CERTIFICATION/404. Enforcement of noise certification requirements.

404. Enforcement of noise certification requirements.

The Civil Aviation Authority ('CAA')¹ is empowered to prevent the operation of aircraft in contravention of the noise certification requirements. Where the CAA or an authorised person² has reason to believe that a civil propeller-driven aeroplane³ or a civil subsonic jet aeroplane is intended to be operated by any person without the noise certificate⁴ required to be in force in respect of that aeroplane, it or he may give to the person appearing to be in command of the aeroplane a direction that he must not permit the aeroplane to take off until the CAA or the authorised person has informed him that the direction is cancelled⁵. Whether or not such a direction has been given, the CAA or the authorised person may detain the aeroplane until it or he is satisfied that the aeroplane will not be so operated⁶.

If it appears to the CAA or an authorised person⁷ that a supersonic aeroplane, microlight aeroplane⁸ or helicopter is intended or likely to be flown in contravention of the noise certification requirements⁹, it or he may direct the operator¹⁰ or the commander¹¹ of the aircraft that he is not to permit the aircraft to make the flight or any other flight of such description as may be specified in the direction, until the direction has been revoked by the CAA or by an authorised person¹²; and, if the aircraft is in the United Kingdom¹³, the CAA or the authorised person may take such steps as are necessary to detain the aircraft¹⁴.

Failure to comply with any such direction, without reasonable excuse, is an offence¹⁵.

The CAA or any authorised person may enter upon and inspect any aircraft for these purposes¹⁶. In order to ascertain whether the noise certification requirements are being complied with, the CAA and any authorised person may also gain access, at all reasonable times, to any airport, aerodrome¹⁷ or other place in the United Kingdom¹⁸ where an aircraft has landed¹⁹ for the purpose of inspecting and, where applicable, detaining any aircraft²⁰.

1 As to the CAA see PARA 50 et seq.

2 'Authorised person', in relation to a civil propeller-driven or subsonic jet aeroplane, means any constable and any person authorised by the CAA (whether by name or by class or description) either generally or in relation to a particular case or class of cases: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 3(1).

3 As to the meaning of 'aeroplane' see PARA 397 note 1.

4 As to the meaning of 'noise certificate' in relation to a civil propeller-driven or subsonic jet aeroplane see PARA 397 note 4.

5 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 28(a).

6 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 28(b).

7 As to the meaning of 'authorised person' in relation to a supersonic aeroplane, microlight aeroplane or helicopter see PARA 394 note 2.

8 As to the meaning of 'microlight aeroplane' see PARA 399 note 2.

9 In contravention of the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 4(2): see PARA 399.

10 As to the meaning of 'operator' see PARA 437; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2).

11 As to the meaning of 'commander' see PARA 456; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2).

12 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 18(1).

13 As to the meaning of 'United Kingdom' see PARA 30 note 1.

14 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 18(1). Contravention of art 18 is an offence: see PARA 405.

15 See the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 28; the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 18(2). As to offences see further the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 31, 32; and the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, arts 21, 22.

16 See the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 29(1); and the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 18(3). A person must not intentionally obstruct or impede any person acting in the exercise of these powers: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 29(3); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 20. Contravention of this prohibition is an offence: see the Aeroplane Noise Regulations 1999, SI 1999/1452, regs 31, 32; the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, arts 21, 22; and PARA 405.

17 As to the meaning of 'aerodrome' see PARA 175; definition applied by the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 3(2); and the Interpretation Act 1987 ss 17(2)(a), 23(1), (2). In relation to any government aerodrome or airport the CAA or the authorised person must obtain the permission of the person in charge of that aerodrome before exercising the right of access: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 29(2); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 19(2). As to government aerodromes see PARA 178.

18 As to the meaning of 'United Kingdom' see PARA 30 note 1.

19 As to the meaning of 'to land' see PARA 226 note 5.

20 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 29(1); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 19(1).

UPDATE

399-405 Requirements for supersonic aeroplanes, microlights and helicopters ... Offences in relation to noise certificates

SI 2002/798 replaced: Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, which applies to specified categories of United Kingdom registered aircraft ('non-EASA aircraft') that are not subject to European Parliament and EC Council Regulation 216/2008 (OJ L79, 19.3.2008, p 1) (the 'Basic EASA Regulation'). As to Regulation 216/2008 see PARAS 28, 375. 'EASA' means the European Aviation Safety Agency (see PARA 24) and 'non-EASA aircraft' means an aircraft that is not required by virtue of Regulation 216/2008 and any implementing rules adopted by the EC Commission in accordance with that regulation to hold an EASA certificate of airworthiness (see PARA 376), an EASA restricted certificate of airworthiness (see PARA 376) or an EASA permit to fly (see PARA 385): SI 2008/3133 art 3(1). SI 2008/3133 makes separate provision for noise certification for microlight aeroplanes (arts 4, 5, 8) and for United Kingdom registered state aircraft and research aircraft with or without an EASA equivalent type (arts 6, 7, 9, 10). 'State aircraft' means an aircraft engaged in military, customs, police or similar services and 'research aircraft' means an aircraft which falls within Regulation 216/2008 Annex II category(b): art 3(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(v) Noise Certificates/C. PROVISIONS AS TO CERTIFICATION/405. Offences in relation to noise certificates.

405. Offences in relation to noise certificates.

Any contravention of any of the statutory provisions governing the issue and use of noise certificates¹ is an offence punishable by a fine². Any such contravention in relation to an aeroplane is deemed to be the responsibility of the operator of that aeroplane and its commander unless he proves that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it³. If it is proved that an act or omission of any person which would otherwise have been a contravention by that person was due to any cause not avoidable by the exercise of reasonable care by that person, the act or omission is deemed not to be a contravention by that person⁴.

Where an offence is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly⁵.

A person must not, with intent to deceive (1) use a revoked or suspended noise certificate issued in connection with a supersonic aeroplane, microlight aeroplane or helicopter⁶ or one to which he is not entitled⁷; (2) lend any such certificate to, or allow such a certificate to be used by, any other person⁸; or (3) make any false representation in order to obtain the issue, renewal or variation of any such certificate⁹. No person may purport to issue a noise certificate unless he has been authorised to do so by the Civil Aviation Authority ('CAA')¹⁰. Contravention of any of these provisions is an offence¹¹.

1 Ie the Aeroplane Noise Regulations 1999, SI 1999/1452, and the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, Pt II (arts 4-7), Pt IV (arts 14-16): see PARA 399 et seq.

2 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 31(4); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 21(3). In general, an offence under the Aeroplane Noise Regulations 1999, SI 1999/1452, is punishable by a fine not exceeding level 4 on the standard scale (reg 31(4)), although contravention of reg 18 (carriage and production of noise certificate: see PARA 403) is punishable by a fine not exceeding level 3 on the standard scale (reg 31(3)). In general, an offence under the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, is punishable by a fine not exceeding level 3 on the standard scale (art 21(3)), although contravention of art 4(2) (aircraft not to take off or land in United Kingdom without noise certificate: see PARA 399), art 17 (deception in use of noise certificate: see the text to notes 6-11), art 18(2) (failure to comply with direction not to fly: see PARA 404) or art 20 (obstruction of persons implementing noise certification requirements: see PARA 404) is punishable by a fine not exceeding the statutory maximum (art 21(4)). As to the standard scale see PARA 50 note 8. As to the statutory maximum see PARA 43 note 12.

3 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 31(1); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 21(1). This is without prejudice to the liability of any other person for that contravention: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 31(1); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 21(1).

4 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 31(2); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 21(2).

5 Aeroplane Noise Regulations 1999, SI 1999/1452, reg 32(1); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 22(1). Where the affairs of a body corporate are managed by its members, this provision applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: Aeroplane Noise Regulations 1999, SI 1999/1452, reg 32(2); Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 22(2).

6 le a revoked or suspended noise certificate issued under the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, Pt II (arts 4-7). As to these certificates see PARA 399. As to the revocation and suspension of noise certificates see PARA 402. As to the meaning of 'noise certificate' in relation to supersonic aeroplanes, microlights or helicopters see PARA 400 note 2. As to the meaning of 'microlight aeroplane' see PARA 399 note 2.

7 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 17(1)(a).

8 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 17(1)(b).

9 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 17(1)(c).

10 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 17(2). As to the CAA see PARA 50 et seq.

11 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 21(4). The penalty on summary conviction is a fine not exceeding the statutory maximum: see art 21(4).

UPDATE

399-405 Requirements for supersonic aeroplanes, microlights and helicopters ... Offences in relation to noise certificates

SI 2002/798 replaced: Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, which applies to specified categories of United Kingdom registered aircraft ('non-EASA aircraft') that are not subject to European Parliament and EC Council Regulation 216/2008 (OJ L79, 19.3.2008, p 1) (the 'Basic EASA Regulation'). As to Regulation 216/2008 see PARAS 28, 375. 'EASA' means the European Aviation Safety Agency (see PARA 24) and 'non-EASA aircraft' means an aircraft that is not required by virtue of Regulation 216/2008 and any implementing rules adopted by the EC Commission in accordance with that regulation to hold an EASA certificate of airworthiness (see PARA 376), an EASA restricted certificate of airworthiness (see PARA 376) or an EASA permit to fly (see PARA 385): SI 2008/3133 art 3(1). SI 2008/3133 makes separate provision for noise certification for microlight aeroplanes (arts 4, 5, 8) and for United Kingdom registered state aircraft and research aircraft with or without an EASA equivalent type (arts 6, 7, 9, 10). 'State aircraft' means an aircraft engaged in military, customs, police or similar services and 'research aircraft' means an aircraft which falls within Regulation 216/2008 Annex II category(b): art 3(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(vi) Certificates of Maintenance Review/406. Maintenance schedules and certificates of maintenance review.

(vi) Certificates of Maintenance Review

406. Maintenance schedules and certificates of maintenance review.

An aircraft registered in the United Kingdom¹ in respect of which a certificate of airworthiness² is in force must not fly unless the aircraft (including in particular its engines), together with its equipment and radio station, is maintained in accordance with a maintenance schedule³ approved by the Civil Aviation Authority ('CAA')⁴ in relation to that aircraft⁵.

An aircraft registered in the United Kingdom in respect of which a certificate of airworthiness is in force and which is either a public transport or an aerial work aircraft must not fly unless there is in force a certificate (referred to as a 'certificate of maintenance review') issued in respect of the aircraft, certifying the date on which the maintenance review was carried out and the date when the next review is due⁶.

1 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 As to certificates of airworthiness see PARA 376 et seq.

3 A maintenance schedule approved pursuant to the Air Navigation Order 2005, SI 2005/1970, art 14(1)(a), in relation to a public transport or aerial work aircraft must specify the occasions on which a review must be carried out for the purpose of issuing a certificate of maintenance review: art 14(2). As to public transport aircraft see PARA 363. As to aerial work aircraft see PARA 364.

4 As to the CAA see PARA 50 et seq.

5 Air Navigation Order 2005, SI 2005/1970, art 14(1)(a) (amended by SI 2007/3467). Contravention of this provision is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale: Air Navigation Order 2005, SI 2005/1970, art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

6 Air Navigation Order 2005, SI 2005/1970, art 14(1)(b). Contravention of this provision is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(vi) Certificates of Maintenance Review/407. Issue of certificates of maintenance review.

407. Issue of certificates of maintenance review.

A certificate of maintenance review¹ may be issued only by a person authorised by the Civil Aviation Authority ('CAA')² in a particular case³ or by a person approved by the CAA as being competent to issue such certificates⁴ or by the holder of an aircraft maintenance licence⁵ or the holder of, and in accordance with, an aircraft maintenance engineer's licence⁶ granted either under the Air Navigation Order 2005⁷, or under the law of a country other than the United Kingdom⁸ and rendered valid under the Air Navigation Order 2005⁹, or under the law of any such country as may be prescribed¹⁰ in accordance with the privileges endorsed on the licence and subject to any conditions which may be prescribed¹¹.

Upon approving a maintenance schedule, the CAA may direct that certificates of maintenance review relating to that schedule or to any specified part of it may be issued only by the holder of such a licence as is specified¹².

The person issuing the certificate of maintenance review must verify (1) that maintenance has been carried out in accordance with the maintenance schedule¹³; (2) that, where required by the CAA, the aircraft has been inspected and modified as certified in the relevant certificate of release to service¹⁴; (3) that defects entered in the technical log¹⁵ or approved record¹⁶ of the aircraft have been rectified or deferred as provided by the CAA¹⁷; and (4) that certificates of release to service have been properly issued¹⁸.

Certificates of maintenance review must be issued in duplicate¹⁹ and preserved by the operator for a period of two years after they have been issued²⁰.

1 As to certificates of maintenance review see PARA 406.

2 As to the CAA see PARA 50 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 14(3)(b).

4 Air Navigation Order 2005, SI 2005/1970, art 14(3)(c).

5 Air Navigation Order 2005, SI 2005/1970, art 14(3)(d). I.e. a licence granted by the CAA under EC Commission Regulation 2042/2003 (OJ L315, 28.11.2003, p 1) on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks Annex III (Part 66): Air Navigation Order 2005, SI 2005/1970, arts 14(3)(d), 155(1).

6 As to the licensing of maintenance engineers see PARA 409.

7 See the Air Navigation Order 2005, SI 2005/1970, art 14(3)(a)(i).

8 As to the meaning of 'United Kingdom' see PARA 30 note 1.

9 See the Air Navigation Order 2005, SI 2005/1970, art 14(3)(a)(ii).

10 'Prescribed' means prescribed by regulations made by the Secretary of State under the Air Navigation Order 2005, SI 2005/1970: art 155(1). As to the Secretary of State see PARA 33. At the date at which this volume states the law, no countries had been prescribed for this purpose.

11 See the Air Navigation Order 2005, SI 2005/1970, art 14(3)(a)(iii). At the date at which this volume states the law no conditions had been prescribed.

12 See the Air Navigation Order 2005, SI 2005/1970, art 14(4). Failure to comply with a direction is an offence: see arts 147, 148, Sch 14.

- 13 See the Air Navigation Order 2005, SI 2005/1970, art 14(5)(a).
- 14 See the Air Navigation Order 2005, SI 2005/1970, art 14(5)(b). As to certificates of release to service see PARA 423 note 5.
- 15 As to the technical log see PARA 408.
- 16 As to the approved record see PARA 408 note 1.
- 17 See the Air Navigation Order 2005, SI 2005/1970, art 14(5)(c).
- 18 See the Air Navigation Order 2005, SI 2005/1970, art 14(5)(d). All necessary information must be made available by the operator of the aircraft: see art 14(5).
- 19 See the Air Navigation Order 2005, SI 2005/1970, art 14(6). One of the duplicates of the most recently issued certificate must be carried in the aircraft when so required by art 86 (see PARAS 483-484), and the other must be kept by the operator elsewhere than in the aircraft: art 14(7).
- 20 See the Air Navigation Order 2005, SI 2005/1970, art 14(8).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(vi) Certificates of Maintenance Review/408. Entries in technical log or approved record.

408. Entries in technical log or approved record.

A technical log or an approved record¹ must be kept in respect of every public transport² and aerial work³ aircraft registered in the United Kingdom⁴ in respect of which a certificate of airworthiness is in force⁵. At the end of every flight⁶ by such an aircraft, the commander must enter into the technical log⁷ or the approved record (1) the times at which the aircraft took off and landed⁸; (2) particulars of any defect in any part of the aircraft or its equipment which is known to him, and which affects the airworthiness or safe operation of the aircraft, or, if no such defect is known to him, an entry to that effect⁹; and (3) any other airworthiness or operation particulars required by the Civil Aviation Authority ('CAA')¹⁰. The commander must sign and date the entries¹¹.

Upon the rectification of any defect entered in a technical log or approved record, a person issuing the certificate of release to service¹² must enter the certificate in the technical log or approved record in such a position as to be readily identifiable with the entry of the defect to which it relates¹³.

The technical log or approved record must be preserved by the operator¹⁴ for a period of at least two years after the aircraft has been destroyed or has been permanently withdrawn from use, or for such shorter period as permitted by the CAA in a particular case¹⁵.

1 In the case of an aircraft of which the maximum total weight authorised is 2,730 kg or less and which is not operated by the holder of an air operator's certificate granted by the Civil Aviation Authority ('CAA') under the Air Navigation Order 2005, SI 2005/1970, art 6(2) (see PARA 100) a record approved by the CAA (in arts 15, 14(5)(c) and Sch 6 called an 'approved record') may be kept instead of a technical log: art 15(3). As to the meaning of 'maximum total weight authorised' see PARA 363 note 9. As to the CAA see PARA 50 et seq.

2 As to public transport aircraft see PARA 363.

3 As to aerial work aircraft see PARA 364.

4 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 Air Navigation Order 2005, SI 2005/1970, art 15(1), (2) (art 15(1) amended by SI 2007/3467). As to certificates of airworthiness see PARA 376 et seq.

6 In the case of two or more consecutive flights each of which begins and ends within the same 24 hour period, with the same commander, and, except where each flight is for the purpose of dropping or projecting any material for agricultural, public health or similar purposes, where each such flight begins and ends at the same aerodrome, the commander may make the entries at the end of the last such flight unless he becomes aware of a defect during an earlier flight: see the Air Navigation Order 2005, SI 2005/1970, art 15(5). As to the meaning of 'commander' see PARA 456.

7 The technical log or approved record must be carried in the aircraft when the Air Navigation Order 2005, SI 2005/1970, art 86 (see PARAS 483-484) so requires and copies of the entries referred to above must be kept on the ground: art 15(7). However, in the case of an aeroplane of which the maximum total weight authorised does not exceed 2,730 kg, or a helicopter, if it is not reasonably practicable for the copy of the technical log or approved record to be kept on the ground it may be carried in the aeroplane or helicopter, as the case may be, in a container approved by the CAA for that purpose: art 15(7).

8 See the Air Navigation Order 2005, SI 2005/1970, art 15(4)(a). As to the meaning of 'to land' see PARA 226 note 5.

9 See the Air Navigation Order 2005, SI 2005/1970, art 15(4)(b).

- 10 See the Air Navigation Order 2005, SI 2005/1970, art 15(4)(c).
- 11 See the Air Navigation Order 2005, SI 2005/1970, art 15(4).
- 12 See PARA 428.
- 13 See the Air Navigation Order 2005, SI 2005/1970, art 15(6).
- 14 As to the operator of an aircraft see PARA 437.
- 15 See the Air Navigation Order 2005, SI 2005/1970, art 15(9).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(3) CERTIFICATES/(vi) Certificates of Maintenance Review/409. Licensing of maintenance engineers.

409. Licensing of maintenance engineers.

The Civil Aviation Authority ('CAA')¹ must grant a licence, known as an 'aircraft maintenance engineer's licence', subject to such conditions as it thinks fit, to act as an aircraft maintenance engineer where it is satisfied that the applicant is a fit person to hold the licence and is qualified by reason of his knowledge, experience, competence and skill in aeronautical engineering². The holder of such a licence is authorised to issue certificates of maintenance review³, certificates of release to service⁴ or certificates of fitness for flight under the 'A' conditions⁵.

An appeal lies to a county court from any decision of the CAA that a person is not a fit person to hold such a licence, and, if satisfied that on the evidence submitted to the CAA it was wrong in so deciding, the court may reverse the decision⁶. No appeal lies, however, from a decision that the applicant was not qualified by reason of a deficiency in his knowledge, experience, competence, skill or physical or mental fitness⁷.

The licence remains in force for a period specified in it, not exceeding five years, but it may be renewed from time to time⁸. Such a licence is not valid unless it bears the ordinary signature of the holder in ink or indelible pencil⁹.

The CAA may issue a certificate rendering valid any licence as an aircraft maintenance engineer granted under the law of any country other than the United Kingdom¹⁰.

The CAA may, for these purposes, either absolutely or subject to such conditions as it thinks fit (1) approve any course of training or instruction¹¹; (2) authorise a person to conduct such examinations or tests as it may specify¹²; and (3) approve a person to provide or conduct any course of training or instruction¹³.

1 As to the CAA see PARA 50 et seq.

2 See the Air Navigation Order 2005, SI 2005/1970, art 18(1). For the purpose of the grant of a licence, the applicant must furnish such evidence and undergo such examinations and tests as the CAA may require: art 18(1). The holder of an aircraft maintenance engineer's licence must not exercise the privileges of such a licence if he knows or suspects that his physical or mental condition renders him unfit to exercise such privileges (art 18(7)), and must not, when exercising the privileges of such a licence, be under the influence of drink or a drug to such an extent as to impair his capacity to exercise such privileges (art 18(8)). As to offences relating to alcohol and drugs see Railways and Transport Safety Act 2003 Pt 5 (ss 92-102) and PARA 633.

3 See the Air Navigation Order 2005, SI 2005/1970, art 18(2)(a). As to certificates of maintenance review see PARA 406 et seq.

4 See the Air Navigation Order 2005, SI 2005/1970, art 18(2)(b). As to certificates of release to service see PARA 428.

5 See the Air Navigation Order 2005, SI 2005/1970, art 18(2)(c). As to the 'A' conditions see PARA 378.

6 See the Air Navigation Order 2005, SI 2005/1970, art 154(1). The CAA must be a respondent to the appeal: see art 154(5). Its decision is deemed to have been taken on the date on which it furnished the applicant with a statement of its reasons for the decision: see art 154(6). As to the procedure see PARA 132.

7 Air Navigation Order 2005, SI 2005/1970, art 154(2).

8 See the Air Navigation Order 2005, SI 2005/1970, art 18(3). This is subject to art 92: see PARA 490.

9 Air Navigation Order 2005, SI 2005/1970, art 18(5). However, if the licence is annexed to an aircraft maintenance licence issued under Part 66 it is sufficient if that Part 66 licence bears such a signature: Air Navigation Order 2005, SI 2005/1970, art 18(5). As to the meaning of 'Part 66' see PARA 407 note 5.

10 Air Navigation Order 2005, SI 2005/1970, art 18(4). As to the meaning of 'United Kingdom' see PARA 30 note 1.

11 Air Navigation Order 2005, SI 2005/1970, art 18(6)(a).

12 Air Navigation Order 2005, SI 2005/1970, art 18(6)(b).

13 Air Navigation Order 2005, SI 2005/1970, art 18(6)(c).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(i) General Equipment/410. Equipment of aircraft.

(4) EQUIPMENT AND REPAIRS

(i) General Equipment

410. Equipment of aircraft.

An aircraft must not fly¹ unless it is so equipped as to comply with the law of the country in which it is registered² and to enable lights and markings³ to be displayed and signals to be made in accordance with the Air Navigation Order 2005⁴. Where an aircraft is registered in the United Kingdom⁵, the equipment required to be carried is specified by the Air Navigation Order 2005⁶. It must comply with the specifications⁷, be of a type approved by the European Aviation Safety Agency ('EASA')⁸ or the Civil Aviation Authority ('CAA')⁹, and be installed in a manner approved by EASA in the case of an EASA aircraft¹⁰ and the CAA in the case of a non-EASA aircraft¹¹. The CAA may direct that such an aircraft must carry such additional or special equipment or supplies as it may specify in order to facilitate the aircraft's navigation, the carrying out of search and rescue operations, or the survival of the persons carried in the aircraft¹².

The position of equipment for emergency use must be indicated by clear markings in or on the aircraft¹³. In particular, in every public transport aircraft¹⁴ registered in the United Kingdom there must be provided individually for each passenger¹⁵ or, if the CAA so permits in writing, exhibited prominently in every passenger compartment, a notice relevant to the aircraft in question containing pictorial instructions and information as to the brace position to be adopted in the event of an emergency landing, the method of use of the safety belts or safety harnesses, the location of emergency exits and how they are to be used, and the location and use of lifejackets, escape slides, life rafts and oxygen masks¹⁶.

All equipment installed or carried in an aircraft must be so installed or stowed and kept stowed, maintained and adjusted as not to be a source of danger in itself or to impair the airworthiness of the aircraft or the proper functioning of any equipment or services necessary for the aircraft's safety¹⁷.

1 As to the meaning of 'flight' see PARA 530.

2 As to the registration of aircraft see PARA 367 et seq.

3 As to the marking of aircraft see PARA 374.

4 Air Navigation Order 2005, SI 2005/1970, art 19(1). Flight without the required equipment in contravention of art 19 is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. Article 19 does not apply to radio communication and radio navigation equipment except that specified in Sch 4: art 19(10). As to radio equipment generally see PARA 416 et seq.

5 As to the meaning of 'United Kingdom' see PARA 30 note 1.

6 See the Air Navigation Order 2005, SI 2005/1970, art 19(2)(a), Sch 4 (amended by SI 2007/274; and SI 2007/3467). This specifies the equipment to be carried by different types of aircraft in the case of flights of different types for different purposes, at different times and heights over different places and under different flight rules. An aircraft registered in the United Kingdom may in special circumstances take off without all the required equipment or with equipment not in a fit condition for use: see the Air Navigation Order 2005, SI 2005/1970, art 21.

7 Air Navigation Order 2005, SI 2005/1970, art 19(2)(b).

8 As to EASA see PARA 24.

9 Air Navigation Order 2005, SI 2005/1970, art 19(2)(c). As to the CAA see PARA 50 et seq. Items of equipment not required to be of a type approved by the CAA are listed in Sch 4 para 4.

10 As to the meaning of 'EASA aircraft' see PARA 375 note 3.

11 Air Navigation Order 2005, SI 2005/1970, art 19(2)(d). As to the meaning of 'non-EASA aircraft' see PARA 375 note 4. In particular, all navigational equipment capable of establishing the aircraft's position in relation to an earlier position must, when carried in an aircraft registered in the United Kingdom, be of a type approved by EASA or the CAA and be installed in a manner so approved: see art 19(9).

12 Air Navigation Order 2005, SI 2005/1970, art 19(3). The equipment carried must be so installed, stowed, maintained and adjusted as to be readily accessible and capable of being used by the person for whose use it is intended: art 19(4). Failure to comply with a direction is an offence: see arts 147, 148, Sch 14.

13 Air Navigation Order 2005, SI 2005/1970, art 19(5).

14 As to public transport aircraft see PARA 363.

15 As to the meaning of 'passenger' see PARA 362 note 5.

16 Air Navigation Order 2005, SI 2005/1970, art 19(7).

17 Air Navigation Order 2005, SI 2005/1970, art 19(8).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(i) General Equipment/411. Exits and break-in areas in aircraft.

411. Exits and break-in areas in aircraft.

In every public transport aeroplane or helicopter¹ registered in the United Kingdom² which is carrying passengers³, every exit from the aircraft and every internal door in it must be in working order, and during take-off and landing⁴ and during any emergency, must be kept free from obstruction, and must not be fastened by locking or otherwise so as to prevent, hinder or delay its use by passengers⁵. Every exit from the aircraft must be marked on interior surfaces with the words 'EXIT' or 'EMERGENCY EXIT' in capital letters⁶, and on exterior surfaces with the words 'EXIT' or 'EMERGENCY EXIT' in capital letters, which must be located on a background which provides adequate contrast⁷. Every exit must be marked on interior surfaces on or near the inside surface of the door or other closure of the exit with instructions in English and with diagrams to indicate the correct method of opening it⁸. Every exit which may be opened from the outside must also be marked on or near the exterior surface of the door or other closure of the exit with instructions in English and with diagrams to indicate the correct method of opening the exit, which must be located on a background which provides adequate contrast⁹.

An operator¹⁰ of an aircraft registered in the United Kingdom must ensure that if areas of the fuselage suitable for break-in by rescue crews in emergency are marked on aeroplanes and helicopters, those areas are marked on the exterior surface of the fuselage with markings to show the areas ('break-in areas') which can, for the purposes of rescue in an emergency, be most readily and effectively broken into by persons outside the aeroplane or helicopter¹¹. If instructions are marked on the break-in areas, the words 'CUT HERE IN EMERGENCY' must be marked across the centre of each break-in area in capital letters¹².

All markings required by the provisions described above must, in addition to specific requirements as to legibility and visibility¹³, be painted, or affixed by other equally permanent means¹⁴, and be kept at all times clean and unobscured¹⁵.

1 As to public transport aircraft see PARA 363.

2 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 As to the meaning of 'passenger' see PARA 362 note 5.

4 As to the meaning of 'to land' see PARA 226 note 5.

5 Air Navigation Order 2005, SI 2005/1970, art 72(1), (2). Contravention of art 72 is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. For the circumstances in which an exit may be obstructed or an internal door may be locked see art 72(3); and PARA 498. If one, but not more than one, exit becomes inoperative at a place where it is not reasonably practicable for it to be repaired or replaced, the aircraft may carry passengers until it next lands at a place where the repair or replacement can be made (art 72(10)), provided the number of passengers carried and position of their seats are in accordance with arrangements approved by the Civil Aviation Authority ('CAA') and the exit is fastened and visibly condemned (art 72(11)). As to the CAA see PARA 50 et seq.

6 Air Navigation Order 2005, SI 2005/1970, art 72(4) (amended by SI 2007/274). The words so marked must be red in colour and if necessary must be outlined in white to contrast with the background: Air Navigation Order 2005, SI 2005/1970, art 72(4).

7 Air Navigation Order 2005, SI 2005/1970, art 72(4A) (added by SI 2007/274).

8 Air Navigation Order 2005, SI 2005/1970, art 72(5) (amended by SI 2007/274). The markings must be red in colour and located on a background which provides adequate contrast: Air Navigation Order 2005, SI 2005/1970, art 72(5).

9 Air Navigation Order 2005, SI 2005/1970, art 72(6) (substituted by SI 2007/274).

10 As to the meaning of 'operator' see PARA 437.

11 Air Navigation Order 2005, SI 2005/1970, art 72A(1), (2) (art 72A added by SI 2007/274). The break-in areas must be marked by right angled corner markings, each arm of which must be 9 cm in length along its outer edge and 3 cm in width: Air Navigation Order 2005, SI 2005/1970, art 72A(3)(a) (as so added). If the corner markings are more than 2 metres apart, intermediate lines (measuring 9 cm by 3 cm) must be inserted so that there is no more than 2 metres between adjacent marks: art 72A(3)(b) (as so added). The colour of break-in markings must be red or yellow, and if necessary they must be outlined in white to contrast with the background: art 72A(4) (as so added).

12 Air Navigation Order 2005, SI 2005/1970, art 72A(5) (as added: see note 11).

13 For the requirements see the text and notes 6-12.

14 Air Navigation Order 2005, SI 2005/1970, arts 72(9)(a), 72A(6)(a) (art 72A(6)(a) as added: see note 11).

15 Air Navigation Order 2005, SI 2005/1970, arts 72(9)(b), 72A(6)(b) (art 72A(6)(b) as added: see note 11).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(i) General Equipment/412. Inspection for airworthiness purposes.

412. Inspection for airworthiness purposes.

The Civil Aviation Authority ('CAA')¹ may cause such inspections, investigations, tests, experiments and flight trials to be made as it deems necessary²; and any person authorised in writing by the CAA may at any reasonable time inspect any part of, or material intended to be incorporated or used in the manufacture of any part of, an aircraft or its equipment or any document relating to it, and may for that purpose go upon any aerodrome³ or enter any aircraft factory⁴. Impeding a person acting in the exercise of these powers is an offence⁵.

1 As to the CAA see PARA 50 et seq.

2 Ie for the purposes of the Air Navigation Order 2005, SI 2005/1970, Pt 3 (arts 8-24) (airworthiness and equipment of aircraft) or for the purposes of Part 21, Part 145 or Part M (ie EC Commission Regulation 1702/2003 (OJ L243, 27.9.2003, p 6) laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations Annex (Pt 21), or EC Commission Regulation 2042/2003 (OJ L315, 28.11.2003, p 1) on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks Annex I (Pt M) or Annex II (Pt 145)): see the Air Navigation Order 2005, SI 2005/1970, arts 24, 155(1).

3 As to the meaning of 'aerodrome' see PARA 175.

4 Air Navigation Order 2005, SI 2005/1970, art 24.

5 Air Navigation Order 2005, SI 2005/1970, art 146. The penalty is on summary conviction a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(i) General Equipment/413. Aircraft log books.

413. Aircraft log books.

In addition to any other log books required by or under the Air Navigation Order 2005¹, there must be kept in respect of every aircraft registered in the United Kingdom² an aircraft log book³, a separate log book for each engine⁴, and a separate log book for each variable pitch propeller⁵. The particulars to be included in the log books are specified by the Air Navigation Order 2005⁶. Each entry in a log book must, in general, be made as soon as is practicable after the occurrence to which it relates⁷; and any document which is incorporated by reference in a log book is deemed, for the purposes of the Air Navigation Order 2005, to be part of the log book⁸.

It is the duty of the operator⁹ of the aircraft to keep the required log books in accordance with the provisions described above¹⁰ and to preserve them for a period of at least two years after the destruction or permanent withdrawal of the aircraft or of that part of the aircraft to which they relate¹¹.

Contravention of the requirement to keep and maintain log books is an offence¹².

1 le the Air Navigation Order 2005, SI 2005/1970. See PARAS 408, 453, 581.

2 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 Air Navigation Order 2005, SI 2005/1970, art 22(1)(a). 'Log book', in the case of an aircraft log book, engine log book, variable pitch propeller log book, or personal flying log book, includes a record kept either in a book or by any other means approved by the Civil Aviation Authority ('CAA') in the particular case: art 155(1). As to the CAA see PARA 50 et seq.

4 Air Navigation Order 2005, SI 2005/1970, art 22(1)(b).

5 Air Navigation Order 2005, SI 2005/1970, art 22(1)(c).

6 See the Air Navigation Order 2005, SI 2005/1970, art 22(2), Sch 6.

7 See the Air Navigation Order 2005, SI 2005/1970, art 22(3). An entry may not be made more than seven days after the expiration of the certificate of maintenance review (if any) in force in respect of the aircraft at the time of the occurrence: see art 22(3)(a). As to certificates of maintenance review see PARA 406 et seq.

8 Air Navigation Order 2005, SI 2005/1970, art 22(4).

9 As to the meaning of 'operator' see PARA 437.

10 Air Navigation Order 2005, SI 2005/1970, art 22(5).

11 Air Navigation Order 2005, SI 2005/1970, art 22(6). This is subject to art 91 (preservation of documents): see PARA 477.

12 Air Navigation Order 2005, SI 2005/1970, art 148(5), Sch 14 Pt A. The penalty for such an offence is a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(i) General Equipment/414. Aircraft weight schedules.

414. Aircraft weight schedules.

Where a certificate of airworthiness¹ is in force in respect of a flying machine² or glider, the aircraft concerned must be weighed and the position of its centre of gravity determined at such times and in such manner as the Civil Aviation Authority ('CAA')³ may require in the case of that aircraft⁴. The operator⁵ of the aircraft must then prepare a weight schedule showing the basic weight of the aircraft⁶, and the position of the aircraft's centre of gravity⁷.

The operator must preserve the weight schedule until the expiry of a period of six months following the next occasion on which the aircraft is weighed⁸.

1 As to certificates of airworthiness see PARA 376 et seq.

2 As to the various types of flying machine see PARA 360.

3 As to the CAA see PARA 50 et seq.

4 Air Navigation Order 2005, SI 2005/1970, art 23(1). Contravention of art 18 is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 As to the meaning of 'operator' see PARA 437.

6 Air Navigation Order 2005, SI 2005/1970, art 23(2)(a). The basic weight of an aircraft is the empty weight of the aircraft empty established in accordance with the type certification basis of the aircraft or such other weight as may be approved by the CAA or the European Aviation Safety Agency ('EASA') in the case of that aircraft: art 23(2)(a). As to EASA see PARA 24.

7 Air Navigation Order 2005, SI 2005/1970, art 23(2)(b). An aircraft's centre of gravity is either the position of the centre of gravity at its basic weight, or such other position of the centre of gravity as may be approved by the CAA or EASA in the case of that aircraft: art 23(2)(b).

8 See the Air Navigation Order 2005, SI 2005/1970, art 23(3). This is subject to art 91 (preservation of documents): see PARA 477.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(i) General Equipment/415. Minimum navigation performance and area navigation equipment.

415. Minimum navigation performance and area navigation equipment.

An aircraft registered in the United Kingdom¹ must not fly in North Atlantic Minimum Navigation Performance Specification airspace² unless it is equipped with navigation systems which enable it to maintain the prescribed navigation performance capability³. The equipment so required must be approved by the European Aviation Safety Agency ('EASA')⁴ or the Civil Aviation Authority ('CAA')⁵, must be installed in a manner approved by EASA in the case of an EASA aircraft⁶ and the CAA in the case of a non-EASA aircraft⁷ and maintained in a manner approved by the CAA, and must, while the aircraft is flying in that airspace, be operated in accordance with procedures approved by the CAA⁸.

An aircraft registered in the United Kingdom must not fly in designated required navigation performance airspace⁹ unless it is equipped with area navigation equipment¹⁰ which enables the aircraft to maintain the navigation performance capability specified in respect of that airspace¹¹ and which (1) is approved by EASA or the CAA¹²; (2) is installed in a manner approved by EASA in the case of an EASA aircraft and the CAA in the case of a non-EASA aircraft¹³; (3) is maintained in a manner approved by the CAA¹⁴; and (4) while the aircraft is flying in that airspace, is operated in accordance with procedures approved by the CAA¹⁵. An aircraft registered elsewhere than in the United Kingdom must not fly in designated required navigation performance airspace in the United Kingdom unless it is equipped with area navigation equipment so as to comply with the law of the country in which the aircraft is registered in so far as that law requires it to be so equipped when flying within designated required navigation performance airspace¹⁶. Such navigation equipment must be capable of being operated so as to enable the aircraft to maintain the navigation performance capability notified in respect of the airspace in which the aircraft is flying, and must be so operated¹⁷.

Unless otherwise authorised by the appropriate air traffic control unit, an aircraft registered in the United Kingdom must not fly in reduced vertical separation minimum airspace¹⁸ notified for these purposes unless it is equipped with height keeping systems which enable the aircraft to maintain the prescribed height keeping performance capability¹⁹, and an aircraft registered elsewhere than in the United Kingdom must not fly in United Kingdom reduced vertical separation minimum airspace²⁰ unless it is so equipped with height keeping systems as to comply with the law of the country in which the aircraft is registered in so far as that law requires it to be so equipped when flying in any specified areas²¹.

Contravention of any of these provisions is an offence²².

1 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 'North Atlantic Minimum Navigation Performance Specification airspace' means the airspace prescribed as such: Air Navigation Order 2005, SI 2005/1970, art 155(1). 'Prescribed' means prescribed by regulations made by the Secretary of State under the Air Navigation Order 2005, SI 2005/1970: art 155(1). As to the airspace that has been prescribed see the Air Navigation (General) Regulations 2006, SI 2006/601, reg 17. As to the Secretary of State see PARA 33.

3 Air Navigation Order 2005, SI 2005/1970, art 56(1). As to the prescribed navigation performance capability see the Air Navigation (General) Regulations 2006, SI 2006/601, reg 16(1).

4 As to EASA see PARA 24.

5 As to the CAA see PARA 50 et seq.

- 6 As to the meaning of 'EASA aircraft' see PARA 375 note 3.
- 7 As to the meaning of 'non-EASA aircraft' see PARA 375 note 4.
- 8 Air Navigation Order 2005, SI 2005/1970, art 56(2).
- 9 'Designated required navigation performance airspace' means airspace which has been notified, prescribed or otherwise designated by the competent authority for the airspace as requiring specified navigation performance capabilities to be met by aircraft flying within it: Air Navigation Order 2005, SI 2005/1970, art 155(1). 'Competent authority' means, subject to art 167 (which specifies the competent authority for certain purposes), in relation to the United Kingdom, the CAA, and in relation to any other country the authority responsible under the law of that country for promoting the safety of civil aviation: art 155(1).
- 10 'Area navigation equipment' means equipment carried on board an aircraft which enables the aircraft to navigate on any desired flight path within the coverage of appropriate ground based navigation aids or within the limits of that on-board equipment or a combination of the two: Air Navigation Order 2005, SI 2005/1970, art 155(1).
- 11 Air Navigation Order 2005, SI 2005/1970, art 59(1).
- 12 Air Navigation Order 2005, SI 2005/1970, art 59(2)(a).
- 13 Air Navigation Order 2005, SI 2005/1970, art 59(2)(b).
- 14 Air Navigation Order 2005, SI 2005/1970, art 59(2)(c).
- 15 Air Navigation Order 2005, SI 2005/1970, art 59(2)(d). An aircraft need not comply with the requirements of art 59(1), (2) where the flight has been authorised by the appropriate air traffic control unit notwithstanding the lack of compliance and provided that the aircraft complies with any instructions the air traffic control unit may give in the particular case: art 59(3). As to the meaning of 'air traffic control unit' see PARA 164 note 3.
- 16 Air Navigation Order 2005, SI 2005/1970, art 60(1).
- 17 Air Navigation Order 2005, SI 2005/1970, art 60(2). An aircraft need not comply with the requirements of art 60(2) where the flight has been authorised by the appropriate United Kingdom air traffic control unit notwithstanding the lack of compliance and provided that the aircraft complies with any instructions the air traffic control unit may give in the particular case: art 60(3).
- 18 'Reduced vertical separation minimum airspace' means any airspace between flight level 290 and flight level 410 inclusive designated by the relevant competent authority as being airspace within which a vertical separation minimum of 1,000 feet or 300 metres is to be applied: Air Navigation Order 2005, SI 2005/1970, art 155(1). 'Flight level' means one of a series of levels of equal atmospheric pressure, separated by notified intervals and each expressed as the number of hundreds of feet which would be indicated at that level on a pressure altimeter calibrated in accordance with the International Standard Atmosphere and set to 1013.2 hectopascals: art 155(1).
- 19 Air Navigation Order 2005, SI 2005/1970, art 57(1). For the prescribed height keeping performance capability see the Air Navigation (General) Regulations 2006, SI 2006/601, reg 16(2). The equipment required for these purposes must be approved by EASA or the CAA, installed and maintained in a manner approved by EASA in the case of an EASA aircraft and the CAA in the case of a non-EASA aircraft and must, while the aircraft is flying in reduced vertical separation minimum airspace, be operated in accordance with procedures approved by the CAA: Air Navigation Order 2005, SI 2005/1970, art 57(2).
- 20 'United Kingdom reduced vertical separation minimum airspace' means United Kingdom airspace which has been notified as reduced vertical separation minimum airspace for the purposes of Air Navigation Order 2005, SI 2005/1970, art 58: art 155(1).
- 21 Air Navigation Order 2005, SI 2005/1970, art 58(a). The equipment must be capable of being operated so as to enable the aircraft to maintain the height keeping performance prescribed in respect of the airspace in which the aircraft is flying, and be so operated: art 58(b). As to the prescribed height keeping performance see note 19.
- 22 See the Air Navigation Order 2005, SI 2005/1970, art 148(5), Sch 14 Pt A. The penalty for such an offence is a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

UPDATE

415 Minimum navigation performance and area navigation equipment

NOTE 9--SI 2005/1970 art 167 amended: SI 2008/1782, SI 2009/1742.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(ii) Radio Equipment/416. Necessity for radio equipment.

(ii) Radio Equipment

416. Necessity for radio equipment.

An aircraft may not fly unless it is so equipped with radio communication and radio navigation equipment as to comply with the law of the country in which the aircraft is registered¹ or of the state of the operator² and to enable communications to be made, and the aircraft to be navigated, in accordance with the provisions of the Air Navigation Order 2005³ and any regulations made under it⁴.

1 As to the registration of aircraft see PARA 367 et seq.

2 As to the operator of an aircraft see PARA 437. As to the meaning of 'state of the operator' see PARA 376 note 4.

3 Ie the Air Navigation Order 2005, SI 2005/1970.

4 Air Navigation Order 2005, SI 2005/1970, art 20(1). Without prejudice to art 20(1), aircraft must be equipped with radio communication and radio navigation equipment in accordance with Sch 5 (amended by SI 2007/274; and SI 2007/3467): Air Navigation Order 2005, SI 2005/1970, art 20(2). Contravention of art 20 is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(ii) Radio Equipment/417. Approval of radio equipment.

417. Approval of radio equipment.

All radio communication and radio navigation equipment installed in an aircraft registered in the United Kingdom¹ or carried on such an aircraft for use with it (whether or not in compliance with the Air Navigation Order 2005² or any regulations made under it) must be of a type approved by the European Aviation Safety Agency ('EASA')³ or the Civil Aviation Authority ('CAA')⁴ in relation to the purpose for which it is to be used, and must be installed in a manner approved by EASA in the case of an EASA aircraft⁵ or the CAA in the case of a non-EASA aircraft⁶. Any modification to radio and radio navigation equipment or to the manner in which it is installed must receive the approval of EASA or the CAA as appropriate⁷.

1 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 I.e. the Air Navigation Order 2005, SI 2005/1970.

3 As to EASA see PARA 24.

4 As to the CAA see PARA 50 et seq.

5 As to the meaning of 'EASA aircraft' see PARA 375 note 3.

6 See the Air Navigation Order 2005, SI 2005/1970, art 20(5). As to the meaning of 'non-EASA aircraft' see PARA 375 note 4. In the case of a non-EASA glider permitted by art 3(2) to fly unregistered (see PARA 367), the manner in which its radio equipment is installed need not be approved by the CAA: see art 20(5)(b). Contravention of art 20 is an offence punishable on summary conviction by a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. As to the meaning of 'glider' see PARA 360 note 6.

7 See the Air Navigation Order 2005, SI 2005/1970, art 20(6).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(ii) Radio Equipment/418. Radio equipment to be carried in aircraft.

418. Radio equipment to be carried in aircraft.

All aircraft must be equipped with radio communication and radio navigation equipment in accordance with the requirements of the Air Navigation Order 2005¹. The Civil Aviation Authority ('CAA')² may in any particular case direct that an aircraft registered in the United Kingdom³ must carry specified additional or special radio communication or radio navigation equipment to facilitate the navigation of the aircraft, the carrying out of search and rescue operations, or the survival of the persons carried in the aircraft⁴. The radio communication and radio navigation equipment must always be maintained in serviceable condition unless otherwise prescribed⁵.

1 See the Air Navigation Order 2005, SI 2005/1970, art 20(1), (2); and PARA 416. As to the equipment which must be carried see Sch 5; and PARA 419.

2 As to the CAA see PARA 50 et seq.

3 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 Air Navigation Order 2005, SI 2005/1970, art 20(3). Failure to comply with a direction is an offence: see arts 147, 148, Sch 14.

5 Air Navigation Order 2005, SI 2005/1970, art 20(4). 'Prescribed' means prescribed by regulations made by the Secretary of State under the Air Navigation Order 2005, SI 2005/1970: art 155(1). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 33. As to flights permitted when equipment is unserviceable see PARA 410 note 6.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(ii) Radio Equipment/419. Particular radio equipment to be carried.

419. Particular radio equipment to be carried.

Provision is made as to the radio equipment to be carried in specific types of aircraft in specified circumstances:

- 331 (1) all aircraft (other than gliders) within the United Kingdom¹ when flying under instrument flight rules within controlled airspace² or within controlled airspace, and all aircraft within the United Kingdom when flying at or above flight level³ 195 or within notified airspace⁴, must be equipped with radiocommunications equipment capable of maintaining direct two-way communication with the appropriate air traffic control units⁵ on the intended route using the frequencies notified or otherwise designated by the competent authority⁶ for that purpose⁷; and all aircraft (other than gliders) registered in the United Kingdom when flying for the purpose of public transport⁸ under the instrument flight rules⁹ must carry such equipment as specified wherever they may be¹⁰;
- 332 (2) radio navigation equipment capable of enabling an aircraft to be navigated on the intended route, including such equipment as may be prescribed¹¹, must be carried by all single-engined aircraft registered in the United Kingdom, wherever they may be, when flying for the purpose of public transport under visual flight rules¹² except over a route on which navigation is effected solely by visual reference to landmarks¹³;
- 333 (3) all aircraft (other than gliders) registered in the United Kingdom, wherever they may be, flying for the purpose of public transport under instrument flight rules must carry radio communication equipment capable of receiving from the appropriate aeronautical radio stations meteorological broadcasts relevant to the intended flight on all occasions¹⁴, and must, while making an approach to landing, also carry radio navigation equipment capable of receiving signals from one or more aeronautical radio stations on the surface to enable the aircraft to be guided to a point from which a visual landing can be made at the aerodrome at which it is to land¹⁵;
- 334 (4) all aircraft (other than gliders) within the United Kingdom making an approach to landing at a notified aerodrome¹⁶ must, unless the appropriate air traffic control unit otherwise permits, carry radio navigation equipment capable of enabling the aircraft to make an approach to landing using the instrument landing system, unless the appropriate air traffic control unit otherwise permits¹⁷;
- 335 (5) all aircraft (other than gliders) within the United Kingdom when flying under instrument flight rules within controlled airspace, all aircraft (except gliders and balloons) within the United Kingdom when flying for the purpose of public transport, all gliders flying at or above flight level 195 except when flying within airspace notified as a temporary reserved area - gliders, all aircraft (other than gliders) within the United Kingdom when flying at or above flight level 245 or flight level 100 or when flying within notified airspace¹⁸, specified aircraft¹⁹ when flying under instrument flight rules within notified airspace²⁰, must carry secondary surveillance radar equipment²¹;
- 336 (6) all aircraft (other than gliders) within the United Kingdom when flying under instrument flight rules within controlled airspace and all aircraft (other than gliders) within the United Kingdom when flying at or above flight level 245 must, unless the appropriate air traffic control unit otherwise permits, carry specified radio and radio

- navigation equipment capable of enabling the aircraft to be navigated along the intended route²²;
- 337 (7) all aircraft (other than gliders) registered in the United Kingdom, wherever they may be, when flying for the purpose of public transport under instrument flight rules or (in the case of multi-engined aircraft) visual flight rules must carry specified radio navigation equipment capable of enabling the aircraft to be navigated on the intended route²³;
- 338 (8) all aeroplanes registered in the United Kingdom, wherever they may be, and all aeroplanes wherever registered when flying in the United Kingdom, powered by one or more turbine jets or turbine propeller engines and either having a maximum take-off weight exceeding 15,000 kilograms or with a maximum approved passenger²⁴ seating configuration of more than 30, and all aeroplanes powered by one or more turbine jets or turbine propeller engines and either having a maximum take-off weight exceeding 5,700 kilograms or a maximum approved passenger seating configuration of more than 19; and (a) registered in the United Kingdom and flying for the purpose of public transport; or (b) registered in the United Kingdom and flying within the airspace of the member states of the European Civil Aviation Conference²⁵; or (c) flying in the United Kingdom, must carry an airborne collision avoidance system²⁶.

Contravention of any of these provisions is an offence²⁷.

- 1 As to the classification of aircraft see PARA 360. As to the meaning of 'United Kingdom' see PARA 30 note 1.
- 2 As to the meaning of 'controlled airspace' see PARA 547.
- 3 As to the meaning of 'flight level' see PARA 415 note 18.
- 4 Ie notified for the purposes of the Air Navigation Order 2005, SI 2005/1970, art 20(2), Sch 5 para 2(2)(b). As to the meaning of 'notified' see PARA 178 note 6.
- 5 As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.
- 6 As to the meaning of 'competent authority' see PARA 415 note 9.
- 7 See the Air Navigation Order 2005, SI 2005/1970, Sch 5 paras 1, 2(1)(a), (b), (2)(a), (b), 4 Scale A (Sch 5 para 2(2)(a) and Sch 5 para 4 Scale A substituted by SI 2007/274). The specified equipment need not be carried if the appropriate air traffic control unit otherwise permits in relation to the particular flight and the aircraft complies with any instructions which the air traffic control unit may give in the particular case: Air Navigation Order 2005, SI 2005/1970, Sch 5 para 3(1).
- 8 As to public transport, and as to the meaning of 'public transport aircraft', see PARA 363. As to the registration of aircraft see PARA 367 et seq.
- 9 As to the meaning of 'instrument flight rules' see PARA 439 note 20.
- 10 See the Air Navigation Order 2005, SI 2005/1970, Sch 5 paras 1, 2(5)(a), (c)-(e), 4 Scale A (Sch 5 para 2(5) amended and Sch 5 para 4 Scale A substituted by SI 2007/274). In the case of the Air Navigation Order 2005, SI 2005/1970, Sch 5 para 2(5)(e), the specified equipment need not be carried if the appropriate air traffic control unit otherwise permits in relation to the particular flight and the aircraft complies with any instructions which the air traffic control unit may give in the particular case: Sch 5 para 3(1).
- 11 'Prescribed' means prescribed by regulations made by the Secretary of State under the Air Navigation Order 2005, SI 2005/1970: art 155(1). At the date at which this volume states the law no such regulations had been made. As to the Secretary of State see PARA 33.
- 12 As to the visual flight rules see PARA 551.
- 13 See the Air Navigation Order 2005, SI 2005/1970, Sch 5 paras 1, 2(5)(d)(ii), 4 Scale B (Sch 5 para 2(5)(d)(ii) amended by SI 2007/274).

- 14 See the Air Navigation Order 2005, SI 2005/1970, Sch 5 paras 1, 2(6)(a), 4 Scale C.
- 15 See the Air Navigation Order 2005, SI 2005/1970, Sch 5 paras 1, 2(5)(a)(i), 4 Scale D. As to the meaning of 'to land' see PARA 226 note 5.
- 16 Is notified for the purposes of the Air Navigation Order 2005, SI 2005/1970, Sch 5 para 2(1)(c).
- 17 See the Air Navigation Order 2005, SI 2005/1970, Sch 5 paras 1, 2(1)(c), 3(1), 4 Scale G.
- 18 Is notified for the purposes of Air Navigation Order 2005, SI 2005/1970, Sch 5 para 2(3)(b).
- 19 Is (1) all aeroplanes having a maximum take-off weight authorised not exceeding 5,700 kg and a maximum cruising true airspeed capability not exceeding 250 knots; (2) all rotorcraft; (3) all aeroplanes having either a maximum take-off weight authorised of more than 5,700 kg or a maximum cruising true airspeed capability of more than 250 knots: Air Navigation Order 2005, SI 2005/1970, Sch 5 para 2(4)(a)-(c).
- 20 Is notified for the purposes of Air Navigation Order 2005, SI 2005/1970, Sch 5 para 2(4).
- 21 See the Air Navigation Order 2005, SI 2005/1970, Sch 5 paras 1, 2(1)(a), (1A), (2A), (3), (4), (5A), 4 Scales E1-E3 (Sch 5 para 2(1)(a), (3) amended, and para 2(1A), (2A), (5A) added, by SI 2007/3467). In the case of the Air Navigation Order 2005, SI 2005/1970, Sch 5 paras 2(1)(a), (1A), (2A), (3), (4), (5A) the specified equipment need not be carried if the appropriate air traffic control unit otherwise permits in relation to the particular flight and the aircraft complies with any instructions which the air traffic control unit may give in the particular case: Sch 5 para 3(1) (amended by SI 2007/3467). In addition, all aircraft which are required to carry scale E2 or E3 are also required, in the circumstances specified in the Chicago Convention (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) Annex 10 vol IV para 2.1.5.3 (3rd Edn, July 2002), to comply with the requirements for antenna diversity set out in that paragraph: Air Navigation Order 2005, SI 2005/1970, Sch 5 paras 2(4A), 4 Scale EE (Sch 5 para 2(4A) added by SI 2007/3467). 'Secondary surveillance radar equipment' means such type of radio equipment as may be notified as being capable of (1) replying to an interrogation from secondary surveillance radar units on the surface; and (2) being operated in accordance with such instructions as may be given to the aircraft by the appropriate air traffic control unit: Air Navigation Order 2005, SI 2005/1970, Sch 5 para 5(6).
- 22 See the Air Navigation Order 2005, SI 2005/1970, Sch 5 paras 1, 2(1)(a), (3)(a), 3(1), 4 Scale F. This equipment includes automatic direction finding equipment, distance measuring equipment and VHF omni-range equipment: Sch 5 para 4 Scale F(a)-(c). 'Automatic direction finding equipment' means radio navigation equipment which automatically indicates the bearing of any radio station transmitting the signals received by such equipment: Sch 5 para 5(2). 'VHF omni-range equipment' means radio navigation equipment capable of giving visual indications of bearings of the aircraft by means of signals received from very high frequency omni-directional radio ranges: Sch 5 para 5(7). 'Distance measuring equipment' means radio equipment capable of providing a continuous indication of the aircraft's distance from the appropriate aeronautical radio stations: Sch 5 para 5(3). Non-public transport aircraft flying under instrument flight rules in Class D and Class E controlled airspace within the United Kingdom are not required to be provided with distance measuring equipment: see Sch 5 para 3(2). As to the meanings of 'Class D airspace' and 'Class E airspace' see PARA 547 note 9.
- 23 See the Air Navigation Order 2005, SI 2005/1970, Sch 5 paras 1, 2(5)(a), (c), 4 Scale H. This equipment includes automatic direction finding equipment, distance measuring equipment, duplicated VHF omni-range equipment and a 75 MHz marker beacon receiver: Sch 5 para 4 Scale H(1)(a)-(d). An aircraft may, however, fly notwithstanding that it does not carry the equipment specified in Sch 5 para 4 Scale H, if it carries alternative radio navigation equipment or navigational equipment approved in accordance with art 19(9) (see PARA 410): Sch 5 para 4 Scale H(2). Where not more than one item of equipment specified in Sch 5 para 4 Scale H is unserviceable when the aircraft is about to begin a flight, the aircraft may nevertheless take off on that flight if it is not reasonably practicable for the repair or replacement of that item to be carried out before the beginning of the flight, the aircraft has not made more than one flight since the item was last serviceable, and the commander of the aircraft has satisfied himself that, taking into account the latest information available as to the route and aerodrome to be used (including any planned diversion) and the weather conditions likely to be encountered, the flight can be made safely and in accordance with any relevant requirements of the appropriate air traffic control unit: Sch 5 para 4 Scale H(3). As to the CAA see PARA 50 et seq. 'Replacement' in relation to any part of an aircraft or its equipment includes the removal and replacement of that part whether or not by the same part, and whether or not any work is done on it, but does not include the removal and replacement of a part which is designed to be removable solely for the purpose of enabling another part to be inspected, repaired, removed or replaced or cargo to be loaded: art 155(1). As to the meaning of 'flight' see PARA 530. As to the commander of an aircraft see PARA 456.
- 24 As to the meaning of 'passenger' see PARA 362 note 5.
- 25 As to the European Civil Aviation Conference ('ECAC') see PARA 16.

26 Air Navigation Order 2005, SI 2005/1970, Sch 5 paras 1, 2(6), (7), 4 Scale J. 'Airborne collision avoidance system' means an aeroplane system which (1) conforms to requirements prescribed for the purpose; (2) is based on secondary surveillance radar transponder signals; (3) operates independently of ground based equipment; and (4) is designed to provide advice and appropriate avoidance manoeuvres to the pilot in relation to other aeroplanes which are equipped with secondary surveillance radar and are in undue proximity: Sch 5 para 5(1). On any flight on which an airborne collision avoidance system is required by art 20 and Sch 5 to be carried in an aeroplane, the system must be operated (a) in the case of an aircraft to which art 38 (see PARA 509) applies, in accordance with procedures contained in the operations manual for the aircraft; (b) in the case of an aircraft registered in the United Kingdom to which art 38 does not apply, in accordance with procedures which are suitable having regard to the purposes of the equipment; or (c) in the case of an aircraft which is registered elsewhere than in the United Kingdom, in accordance with any procedures with which it is required to comply under the law of the country in which the aircraft is registered: art 61. As to the commander's pre-flight duties and the requirements of crew training in relation to airborne collision avoidance systems see art 61A; and PARA 494.

27 See the Air Navigation Order 2005, SI 2005/1970, art 148(5), Sch 14 Pt A. The penalty for such an offence is a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(ii) Radio Equipment/420. Flight radio operator.

420. Flight radio operator.

An aircraft registered in the United Kingdom¹ which is required to be equipped with radio communications apparatus² must carry as a member of the flight crew³ a flight radiotelephony operator⁴ who holds an appropriate licence⁵.

1 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 Is required by virtue of the Air Navigation Order 2005, SI 2005/1970, art 20: see PARA 416 et seq.

3 As to the flight crew see PARA 456 et seq.

4 Air Navigation Order 2005, SI 2005/1970, art 25(1), (11). Contravention of this requirement is an offence punishable by a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. As to the radio operator's duties while the aircraft is in flight see PARA 521 et seq.

5 See the Air Navigation Order 2005, SI 2005/1970, art 26(1), Sch 8 Pt A Section 1(5). As to exceptions within the United Kingdom, the Channel Islands and the Isle of Man for a flight radiotelephony operator who does not hold a licence see art 26(2)(a). As to licensing generally see PARA 92 et seq. Flight radio operators must be tested by or on behalf of the operator as to their competence to perform their duties: see art 42(3), Sch 9 Pt C para 2(4). As to the training of the flight crew see PARA 507.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(ii) Radio Equipment/421. Commander's duties.

421. Commander's duties.

Before an aircraft takes off the commander¹ of the aircraft must reasonably satisfy himself that the radio equipment required to be carried in the circumstances of the intended flight² is carried and is in a fit condition for use³.

1 As to the commander of an aircraft see PARA 456. As to the commander's pre-flight duties generally see PARA 494 et seq.

2 Is required by virtue of the Air Navigation Order 2005, SI 2005/1970, art 20: see PARA 416 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 52(b)(i). Contravention of this requirement is an offence punishable by a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. As to the operation of radio in the aircraft see PARA 523.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(iii) Overhauls, Repairs and Modifications/422. Repairer's contractual obligations.

(iii) Overhauls, Repairs and Modifications

422. Repairer's contractual obligations.

In a contract for the repair of an aircraft or its equipment there are implied terms as to the skill with which, and the time within which, the work will be done. These terms are implied by virtue of the Supply of Goods and Services Act 1982, which applies to contracts for repair¹. It is rare in practice for a contract for the repair, maintenance or overhaul of an aircraft to be made otherwise than on the basis of detailed express terms.

¹ See generally **SALE OF GOODS AND SUPPLY OF SERVICES**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(iii) Overhauls, Repairs and Modifications/423. Repairer's liability to third parties.

423. Repairer's liability to third parties.

If repairs to an aircraft are negligently carried out, the repairer may be directly liable in damages to third parties who are injured by reason of such negligence¹.

If the aircraft or any part of the aircraft or such of its equipment as is necessary for the airworthiness of the aircraft has been overhauled, repaired², replaced, modified or maintained, or has been inspected³, a certificate of release to service issued by a duly qualified engineer⁴ must be in force before the aircraft is flown⁵. This does not, however, necessarily enable a negligent repairer to escape the consequences of his negligence. An engineer who negligently certifies repairs may be liable for damages for breach of contract if damage results. A third party with whom the engineer is in no contractual relationship may have a right of action against the engineer in respect of the negligent certification⁶.

1 See **CONTRACT; NEGLIGENCE**.

2 For these purposes, 'repair' includes, in relation to a compass, its adjustment and compensation; and 'repaired' is to be construed accordingly: Air Navigation Order 2005, SI 2005/1970, art 16(12).

3 Ie as provided in Air Navigation Order 2005, SI 2005/1970, art 10(b): see PARA 384.

4 See the Air Navigation Order 2005, SI 2005/1970, art 16(11).

5 Air Navigation Order 2005, SI 2005/1970, art 16(2). Article 16 applies to any aircraft registered in the United Kingdom in respect of which a certificate of airworthiness is in force except any such aircraft required to be maintained in accordance with Part 145: Air Navigation Order 2005, SI 2005/1970, art 16(1). As to the meaning of 'Part 145' see PARA 412 note 2. As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1. As to certificates of airworthiness see PARA 376 et seq. It is submitted that there is no obligation on an aircraft owner or operator to examine overhaul, repair, replacement or modification work if the appropriate certificate of release to service has been granted. It must be noted that 'certificate of release to service' means a certificate that the aircraft or any part of it or its equipment has been overhauled, repaired, replaced, modified or maintained, in a manner and with material of a type approved by the European Aviation Safety Agency ('EASA') or the Civil Aviation Authority ('CAA') either generally or in relation to a class of aircraft or the particular aircraft and which identifies the overhaul, repair, replacement, modification or maintenance to which the certificate relates and includes particulars of the work done, and that in relation to any inspection required by the CAA it certifies that the aircraft or the part of it or its equipment has been inspected in accordance with the requirements of the CAA and that any consequential repair, replacement or modification has been carried out: see art 16(10). As to EASA see PARA 24. As to the CAA see PARA 50 et seq.

6 See *Hawke v Waterloo-Wellington Flying Club Ltd* (1972) 22 DLR (3d) 266; and generally **NEGLIGENCE**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(iii) Overhauls, Repairs and Modifications/424. Lien for repairs.

424. Lien for repairs.

The repairer of an aircraft delivered to him for repair has a lien upon it for the price of the repairs actually executed¹ but, where no improvement to the machine has been effected, no lien exists for the cost of maintenance not amounting to repair².

¹ See generally **LIEN** vol 68 (2008) PARA 841 et seq. Cf *Hatton v Car Maintenance Co Ltd* [1915] 1 Ch 621; *Albemarle Supply Co Ltd v Hind & Co* [1928] 1 KB 307, CA; *Thaper v Singh* [1987] FLR 369, CA. See also *Wilson v Lombank Ltd* [1963] 1 All ER 740, [1963] 1 WLR 1294; *Tappenden (t/a English and American Autos) v Artus* [1964] 2 QB 185, [1963] 3 All ER 213, CA. It is submitted that the law relating to bailments of and liens over aircraft is no different from that relating to bailments of and liens over, for example, motor vehicles.

² *Hatton v Car Maintenance Co Ltd* [1915] 1 Ch 621. It is thought that in many cases 'maintenance' will amount to repair so as to give rise to a lien: see *Albemarle Supply Co Ltd v Hind & Co* [1928] 1 KB 307 at 313, CA, per Lord Hanworth MR, and at 318 per Scrutton LJ. As to the effect of a mortgage upon a lien see PARA 432.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(iii) Overhauls, Repairs and Modifications/425. Requirements as to overhauls, repairs, replacements and modifications.

425. Requirements as to overhauls, repairs, replacements and modifications.

There are detailed regulations as to overhaul, repair¹, replacement² and modification of parts, which must be complied with in respect of aircraft registered in the United Kingdom³.

1 As to the meaning of 'repair' see PARA 423 note 2.

2 As to the meaning of 'replacement' see PARA 419 note 23.

3 See the Air Navigation Order 2005, SI 2005/1970, arts 16, 17; and PARA 426 et seq. As to the application of art 16 see PARA 423 note 5. As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(iii) Overhauls, Repairs and Modifications/426. Installation of equipment after overhaul, repair or modification.

426. Installation of equipment after overhaul, repair or modification.

No equipment required to be provided for an aircraft¹, except certain navigational, first-aid and other emergency equipment², and no radio communication and radio navigation equipment³ provided for use in an aircraft or in any survival craft carried in an aircraft, whether or not such apparatus is provided in compliance with the Air Navigation Order 2005⁴ or any regulations made under it, may be installed or placed on board for use in an aircraft registered in the United Kingdom⁵ after being overhauled, repaired⁶, modified or inspected unless a certificate of release to service⁷ in respect of it is in force at the time of the installation and relating to the overhaul, repair, modification or inspection⁸.

1 Ie in compliance with the Air Navigation Order 2005, SI 2005/1970, art 19(2), Sch 4 (see PARA 410): see art 16(9)(a). As to the aircraft to which art 16 applies see PARA 423 note 5.

2 Ie equipment provided under Air Navigation Order 2005, SI 2005/1970, Sch 4 para 4 (see PARA 410): see art 16(9)(a).

3 As to radio equipment see PARA 416 et seq.

4 Ie the Air Navigation Order 2005, SI 2005/1970.

5 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

6 As to the meaning of 'repair' see PARA 423 note 2.

7 As to the meaning of 'certificate of release to service' see PARA 423 note 5.

8 See the Air Navigation Order 2005, SI 2005/1970, art 16(9). Contravention of this requirement is an offence punishable by a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(iii) Overhauls, Repairs and Modifications/427. Flight prohibited until requirements complied with.

427. Flight prohibited until requirements complied with.

An aircraft registered in the United Kingdom¹, in respect of which a certificate of airworthiness has been issued or validated², may not fly if the aircraft or any part of the aircraft or such of its equipment as is necessary for the airworthiness of the aircraft has been overhauled, repaired³, replaced, modified, maintained or inspected unless there is in force a certificate of release to service⁴ in respect of it⁵.

This does not, however, apply to light aircraft⁶. Nor does it apply to a non-EASA aircraft⁷ on which a repair or replacement⁸ has been carried out at such a place that it is not reasonably practicable for the repair or replacement to be carried out in such a manner that a certificate of release to service can be issued⁹, or for such a certificate to be issued while the aircraft is in that place¹⁰. In these circumstances, the aircraft may be flown to the nearest place where such a certificate can be issued¹¹ and to which the aircraft can, in the reasonable opinion of the commander, safely fly by a route for which it is properly equipped¹², and to which it is reasonable to fly having regard to any hazards to the liberty or health of any person on board¹³; and the commander of the aircraft¹⁴ must cause written particulars of the flight, and the reasons for making it, to be given to the CAA within ten days¹⁵.

1 As to the aircraft to which the provisions of the Air Navigation Order 2005, SI 2005/1970, art 16 apply see PARA 423 note 5. As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 As to certificates of airworthiness see PARA 376 et seq.

3 As to the meaning of 'repair' see PARA 423 note 2.

4 As to the meaning of 'certificate of release to service' see PARA 423 note 5.

5 See the Air Navigation Order 2005, SI 2005/1970, art 16(2). Contravention of this requirement is an offence punishable by a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. An EASA aircraft to which Part 145 applies must not fly when a certificate of release to service is required by or under Part 145 unless such a certificate is in force: Air Navigation Order 2005, SI 2005/1970, art 17. As to the meaning of 'EASA aircraft' see PARA 375 note 3. As to the meaning of 'Part 145' see PARA 412 note 2.

A certificate of release to service issued under the Air Navigation Order 2005, SI 2005/1970, is not be required to be in force in respect of an aircraft to which art 16 applies if there is in force a certificate of release to service issued in accordance with EC Commission Regulation 1702/2003 (OJ L243, 27.9.2003, p 6) laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations Annex Pt 21 para 21A.163(d): Air Navigation Order 2005, SI 2005/1970, art 16(8).

6 See the Air Navigation Order 2005, SI 2005/1970, art 16(5). The exception applies in the case of an aircraft the maximum total weight authorised of which does not exceed 2,730 kg and in respect of which a certificate of airworthiness of the special category (see PARA 362) is in force, unless the Civil Aviation Authority ('CAA') gives a direction to the contrary in a particular case: see art 16(5). As to the meaning of 'maximum total weight authorised' see PARA 363 note 9. There is no prohibition on flying such an aircraft which is a private aircraft where specified repairs and replacements have been carried out personally by the owner or operator of the aircraft, being the holder of a pilot's licence (see PARA 444), using equipment and parts of a type approved by the European Aviation Safety Agency ('EASA') or the CAA and recording the relevant entries in the log book kept under art 22: see art 16(6), (7). As to the specified repairs and replacements for these purposes see the Air Navigation (General) Regulations 2006, SI 2006/601, reg 12. As to EASA see PARA 24. As to the CAA see PARA 50 et seq. As to the meaning of 'log book' see PARA 413 note 3.

- 7 As to the meaning of 'non-EASA aircraft' see PARA 375 note 4.
- 8 As to the meaning of 'replacement' see PARA 419 note 23.
- 9 See the Air Navigation Order 2005, SI 2005/1970, art 16(3)(a).
- 10 See the Air Navigation Order 2005, SI 2005/1970, art 16(3)(b).
- 11 See the Air Navigation Order 2005, SI 2005/1970, art 16(3), (4)(a).
- 12 See the Air Navigation Order 2005, SI 2005/1970, art 16(4)(b).
- 13 See the Air Navigation Order 2005, SI 2005/1970, art 16(4)(c).
- 14 As to the commander of an aircraft see PARA 456.
- 15 Air Navigation Order 2005, SI 2005/1970, art 16(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(4) EQUIPMENT AND REPAIRS/(iii) Overhauls, Repairs and Modifications/428. Issue and preservation of certificates of release to service.

428. Issue and preservation of certificates of release to service.

A certificate of release to service¹ may be issued only by:

- 339 (1) the holder of an aircraft maintenance engineer's licence²;
- 340 (2) a person approved generally or authorised in a particular case by the Civil Aviation Authority ('CAA')³;
- 341 (3) the holder of a United Kingdom or JAR-FCL⁴ airline transport pilot's licence (aeroplanes) or a flight navigator's licence⁵;
- 342 (4) a person approved in accordance with Part 145⁶, and in accordance with that approval⁷; or
- 343 (5) the holder of an aircraft maintenance licence granted⁸ by the CAA⁹.

Contravention of any of these provisions is an offence¹⁰.

Although there is no specific provision in the Air Navigation Order 2005¹¹ for the preservation of certificates of release to service, such certificates must be available for delivery by the operator of an aircraft to any other person who becomes the operator¹².

1 As to the meaning of 'certificate of release to service' see PARA 423 note 5.

2 Ie (1) a licence granted under the Air Navigation Order 2005, SI 2005/1970, art 18 (see PARA 409), being a licence which entitles the holder to issue a certificate of release to service (art 16(11)(a)(i)); (2) a licence granted under the law of a country other than the United Kingdom and validated under the Air Navigation Order 2005, SI 2005/1970, in accordance with the privileges endorsed on the licence (art 16(11)(a)(ii)); or (3) a licence or authorisation as such an engineer granted or issued by or under the law of any contracting state other than the United Kingdom in which the overhaul, repair, replacement, modification, maintenance or inspection has been carried out, but only in respect of aircraft to which art 16 applies of which the maximum total weight authorised does not exceed 2,730 kg and in accordance with the privileges endorsed on the licence (art 16(11)(b)). As to the aircraft to which art 16 applies see PARA 423 note 5. 'Prescribed' means prescribed by regulations made by the Secretary of State under the Air Navigation Order 2005, SI 2005/1970: art 155(1). As to the Secretary of State see PARA 33. At the date at which this volume states the law no countries are prescribed for this purpose. As to the meaning of 'maximum total weight authorised' see PARA 363 note 9. As to the meaning of 'repair' see PARA 423 note 2.

3 See the Air Navigation Order 2005, SI 2005/1970, art 16(11)(c), (d). As to the CAA see PARA 50 et seq.

4 'JAR-FCL licence' means a licence included in the Air Navigation Order 2005, SI 2005/1970, Sch 8 Pt A Section 2: art 155(1). 'JAR' means Joint Aviation Requirement.

5 Air Navigation Order 2005, SI 2005/1970, art 16(11)(e). A holder of such a licence is permitted to issue a certificate of release to service only in relation to the adjustment and compensation of direct reading magnetic compasses: art 16(11)(e). As to pilots' licences see PARA 444.

6 As to the meaning of 'Part 145' see PARA 412 note 2.

7 Air Navigation Order 2005, SI 2005/1970, art 16(11)(f).

8 Ie under Part 66. As to the meaning of 'Part 66' see PARA 407 note 5.

9 Air Navigation Order 2005, SI 2005/1970, art 16(11)(g).

10 See the Air Navigation Order 2005, SI 2005/1970, art 148(5), Sch 14 Pt A. The penalty for such an offence is a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

11 See the Air Navigation Order 2005, SI 2005/1970.

12 See the Air Navigation Order 2005, SI 2005/1970, art 91(1); and PARA 477.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(5) DEALINGS WITH AIRCRAFT/(i) Sale, Bailment and Mortgage/429. Sale of aircraft.

(5) DEALINGS WITH AIRCRAFT

(i) Sale, Bailment and Mortgage

429. Sale of aircraft.

The sale of aircraft is governed by the ordinary law relating to the sale of goods¹, so that the extent to which the seller of an aircraft, whether he is a manufacturer or not, is liable to a purchaser if the aircraft does not comply with the contract or is defective depends upon the terms and circumstances of the particular sale². When a seller, in breach of contract or as a result of his negligence, sells an aircraft which is defective, the purchaser may in some circumstances be able to recover from the seller the amount of any sums paid by way of damages to third parties. In these respects, it is submitted, an aircraft is no different from a motor car.

A contract for the sale of an aircraft which, to the knowledge of the seller, is intended to be flown in contravention of statutory provisions is void as being a contract for an illegal purpose³.

It is submitted that the law relating to the hire purchase and credit sale of aircraft is the same law as that which applies to other classes of goods⁴.

1 See generally **SALE OF GOODS AND SUPPLY OF SERVICES**. As to notification of change of ownership of an aircraft see PARA 372.

2 See **CONTRACT; DAMAGES; NEGLIGENCE; SALE OF GOODS AND SUPPLY OF SERVICES; COMPETITION** vol 18 (2009) PARA 1 et seq.

3 *Commercial Air Hire Ltd v Wrightways Ltd* [1938] 1 All ER 89 (aircraft to be flown without approval of modifications (cf PARA 427); *Vinall v Howard* [1953] 2 All ER 515 (cheque in payment also unenforceable); and see *Northland Airlines Ltd v Dennis Ferranti Meters Ltd* (1970) 114 Sol Jo 845, CA. As to illegal contracts see generally **CONTRACT**.

4 See **CONSUMER CREDIT**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(5) DEALINGS WITH AIRCRAFT/(i) Sale, Bailment and Mortgage/430. Bailment of aircraft.

430. Bailment of aircraft.

The ordinary law of bailment applies where an aircraft is delivered to a bailee for safe custody or for any other purpose such as repair; the standard of care to be taken by the bailee will vary as the bailment is gratuitous or for valuable consideration, and may be modified by special contract¹. In general the bailee will be excused if he can show that the loss or destruction of chattels, while lawfully in his care, took place without negligence or default attributable to him or his agents acting within the scope of their authority². The measure of damages for negligence or default may include not only the actual loss or damage, but also allowance by way of a hiring charge if the aircraft was profit-earning equipment³.

1 See *Vendair (London) Ltd v Giro Aviation Co Ltd* [1961] 1 Lloyd's Rep 283; and **BAILMENT**.

2 See *F Hills & Sons Ltd v British Airways Ltd* (1936) 56 Ll L Rep 20; and **BAILMENT**. As to agency generally see **AGENCY**.

3 See generally **BAILMENT**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(5) DEALINGS WITH AIRCRAFT/(i) Sale, Bailment and Mortgage/431. Mortgage of aircraft.

431. Mortgage of aircraft.

There are statutory provisions¹ relating to the mortgaging of aircraft registered in the United Kingdom². Such an aircraft, or such an aircraft together with any store of spare parts for it, may be made security for a loan or other valuable consideration³.

The mortgagee or prospective mortgagee may apply⁴ to enter any mortgage of an aircraft⁵ or notice of intention to apply to enter a contemplated mortgage (a 'priority notice'), as the case may be, in the register of aircraft mortgages kept by the Civil Aviation Authority ('CAA')⁶, whereupon the CAA must enter the mortgage or priority notice in the register, noting the time and date of entry⁷, and notify the applicant, the mortgagor and the owner⁸ accordingly⁹.

The removal of an aircraft from the register of aircraft does not affect any entry in the register of aircraft mortgages¹⁰. The provisions of the Bills of Sale Acts 1878 and 1882, in so far as they relate to bills of sale and other documents given by way of security for the payment of money, do not apply to any registered mortgage of an aircraft¹¹.

Where a registered mortgage is discharged, the mortgagor must send the CAA a notification¹², countersigned by the mortgagee, and a copy of the document of discharge or receipt for the mortgage money, or other document which shows, to the satisfaction of the CAA, that the mortgage has been discharged, whereupon the CAA will enter the notification in the register, mark the relevant entries 'Discharged' and notify the mortgagee, the mortgagor and the owner that it has done so¹³.

On paying the appropriate charge, any person may inspect the register or apply to the CAA for the supply of a certified copy of any entry in it or a notification whether there are any entries relating to a particular aircraft¹⁴. All persons are taken to have express notice of all facts appearing in the register¹⁵.

An aircraft owned by a limited company may be charged by way of debenture, which must be registered with the registrar of companies¹⁶. Like any other chattel, an aircraft may be pledged by delivery of possession to a pledgee¹⁷.

1 See the Civil Aviation Act 1982 s 86 (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 64(b); and the Transport Act 2000 s 97, Sch 8 Pt III para 5).

2 As to the registration of aircraft see PARA 367 et seq. As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 3. The order gives no guidance as to the form of an aircraft mortgage for use in England and Wales.

4 Application to enter a mortgage or priority notice in the register must be made in the forms prescribed (see the Mortgaging of Aircraft Order 1972, SI 1972/1268, Sch 1 Pts I, II), accompanied by the appropriate charge and, in the case of a mortgage, by a certified copy of it and, if it is in a language other than English, a certified translation: arts 4(2), 5(2), 6(2). Where two or more aircraft are the subject of more than one mortgage, separate applications must be made: art 6(1). The giving of false information in connection with an application is an offence: see art 17(1), (2).

5 'Mortgage of an aircraft' includes a mortgage which extends to any store of spare parts for that aircraft, but does not otherwise include a mortgage created as a floating charge: Mortgaging of Aircraft Order 1972, SI 1972/1268, art 2(2).

6 Mortgaging of Aircraft Order 1972, SI 1972/1268, arts 4(1), 5(1). As to the CAA see PARA 50 et seq.

7 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 7(1). Applications are entered in the register in the order they were received: art 7(2). The CAA must specify in its Official Record the days and times on which its office is open for such registrations; any application delivered when the office is closed is treated as received when the office is next opened: art 7(3). Provision for the amendment of entries on change of circumstances is also made: see art 8, Sch 1 Pt III. Application may be made to the High Court for the amendment of the register so as to rectify errors in it: art 10. On being served with the order of the court, the CAA must amend the register accordingly: Mortgaging of Aircraft Order 1972, SI 1972/1268, art 10.

8 'Owner' means the person shown as the owner of the mortgaged aircraft on the application for registration of the aircraft in the United Kingdom nationality register maintained by the CAA: Mortgaging of Aircraft Order 1972, SI 1972/1268, art 2(2).

9 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 7(4). For the effect of the registration of the mortgage on the registration of the aircraft see PARA 373.

10 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 12. For the position on the insolvency of the mortgagor see the Insolvency Act 1986 s 285(4); *Bristol Airport plc v Powdrill* [1990] Ch 744, [1990] 2 All ER 493, CA; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARAS 218, 490, 730.

11 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 16(1). See also **BILLS OF SALE** vol 4(1) (2002 Reissue) PARA 670. This exclusion runs from 1 October 1972, ie the date on which the Mortgaging of Aircraft Order 1972, SI 1972/1268, was brought into force: see art 1.

12 The form of notification is set out in the Mortgaging of Aircraft Order 1972, SI 1972/1268, Sch 1 Pt IV (substituted by SI 1981/611).

13 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 9 (substituted by SI 1981/611).

14 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 11(1)-(3). A certified copy of an entry is admissible evidence of the entry: art 11(4). No such application affects the priority of any mortgage: art 11(5). As to priorities see PARA 432.

15 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 13. The registration of a mortgage is not, however, evidence of its validity: art 13.

16 See the Mortgaging of Aircraft Order 1972, SI 1972/1268, art 16(2). A charge by a company created or evidenced by an instrument which would have been registrable as a bill of sale if executed by an individual must be registered under the Companies Act 1985 s 395 (see **COMPANIES** vol 15 (2009) PARA 1279): see s 396(1) (c). As from a day to be appointed, ss 395, 396 are both substituted by the Companies Act 1989 ss 92(a), 93, and will not require such a charge to be registered; however, as from a day to be appointed, the Companies Act 1985 ss 395, 396 are repealed by the Companies Act 2006 s 1295, Sch 16 and replaced by the Companies Act 2006 ss 860-862, which will require such a charge to be registered: see s 860(7)(b) (not in force); and **COMPANIES** vol 15 (2009) PARA 1277 et seq. At the date at which this volume states the law no such day had been appointed.

17 See generally **PLEDGES AND PAWNS**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(5) DEALINGS WITH AIRCRAFT/(i) Sale, Bailment and Mortgage/432. Priority of mortgages.

432. Priority of mortgages.

A mortgage of an aircraft entered in the register of aircraft mortgages¹ has priority over any other mortgage of or charge on that aircraft, other than another mortgage entered in that register², although where two or more mortgages are registered they have priority, as between themselves, according to the times at which they were registered³. Where a priority notice is registered and the contemplated mortgage referred to in it is made and registered within 14 days thereafter, the mortgage is deemed to have priority from the time when the priority notice was registered⁴.

These priorities have effect notwithstanding any express, implied or constructive notice affecting the mortgagee⁵.

This does not give a registered mortgage priority over any possessory lien in respect of work done, at any time, on the aircraft on the express or implied authority of any person entitled to possession of the aircraft, or over any statutory right to detain the aircraft⁶.

1 See PARA 431.

2 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 14(1).

3 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 14(2). Nevertheless, mortgages made before 1 October 1972 (ie the date on which the Mortgaging of Aircraft Order 1972, SI 1972/1268, was brought into force: see art 1) and registered before 31 December 1972 have priority over mortgages made on or after 1 October 1972, and as between themselves have the same priority as they would have had apart from the order: art 14(2)(i).

4 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 14(2)(ii). This is without prejudice to art 14(2)(i): see note 3. In reckoning the 14 days no account is taken of days on which the office of the Civil Aviation Authority ('CAA') is not open for registering mortgages: art 14(3). As to the CAA see PARA 50 et seq.

5 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 14(4).

6 Mortgaging of Aircraft Order 1972, SI 1972/1268, art 14(5). As to liens see PARA 424; and as to powers of detention see PARA 436.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(5) DEALINGS WITH AIRCRAFT/(ii) Charter of Aircraft/433. Classes of charter contract.

(ii) Charter of Aircraft

433. Classes of charter contract.

The owner of an aircraft may by a contract of charter put his aircraft at the disposal of a charterer for a specified flight or flights or for a specified period of time. Such contracts fall into two essentially different categories, depending upon the extent to which the control of the aircraft is transferred to the charterer or remains with the owner¹.

In the one case, the charter operates as a demise of the aircraft itself to the charterer, to which there may or may not be added the services of a crew. Such a contract is often referred to as a 'bare-hull charter', a 'dry charter' or a 'dry lease', and under it the charterer becomes for most purposes the owner of the aircraft, the crew, whether supplied by the owner or the charterer, being the servants of the charterer and under his control in all respects². In such a case, the charterer is the operator³.

In the other case, usually known as a 'time and voyage charter', 'wet charter' or 'wet lease', the contract merely confers upon the charterer the right to use the carrying space of the aircraft for the purpose of conveying passengers or goods upon a specified flight or flights or during a specified period, and to have the services of the crew of the aircraft for that purpose; the crew in such circumstances remain the owner's servants, although the charterer may acquire limited rights to direct them as to the flights to be undertaken, but not as to the manner in which they are to be performed⁴. In such a case, the owner is the operator.

1 Cf the distinction, in relation to the charter of ships, between charterparties which operate by way of demise of the ship, and those which do not so operate. See further **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 205 et seq.

2 As to such charters see PARA 434.

3 As to the operator see PARA 437.

4 As to such charters see PARA 435.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(5) DEALINGS WITH AIRCRAFT/(ii) Charter of Aircraft/434. Bare-hull charters.

434. Bare-hull charters.

Where the charter is a 'bare-hull charter'¹, the rights and liabilities inter se of the owner and the charterer depend primarily upon the individual contract². In the absence of express terms it seems that the owner impliedly undertakes that the aircraft chartered is as fit for the purpose for which it is chartered as reasonable care and skill can render it³, and that any crew supplied are reasonably competent and skilful.

As regards liabilities to third parties, the statutory liability for damage caused to persons or property on the surface⁴ falls upon the charterer if the aircraft has been chartered for a period exceeding 14 days and no operative member of the crew is in the employment of the owner; otherwise the owner remains liable⁵. Passengers on aircraft subject to a bare-hull charter normally enter into contracts of carriage with the operator, so that it is unlikely that any question of the contracting carrier being different from the actual carrier can arise unless the passengers are transferred for carriage to an aircraft operated by another operator without a fresh contract of carriage being made.

Similarly, any common law liabilities which may arise from the operation of the aircraft fall upon the charterer⁶.

The charterer, for his part, is under an implied obligation, where no express provision is made, to exercise all reasonable care in using the aircraft, and is liable for any damage caused to it during the period of the charter, unless he can prove that it was not due to his negligence nor that of his servants⁷.

1 Such charters are also known as 'dry charters' or 'dry leases': see PARA 433.

2 It would be unusual for a public transport aircraft (see PARA 363) to be chartered on a bare-hull basis without a written agreement: see *Autair International Airways Ltd v Claydon Aviation Ltd* [1965] 1 Lloyd's Rep 74.

3 Cf *Reed v Dean* [1949] 1 KB 188 (hire of launch); *Hyman v Nye* (1881) 6 QBD 685 (hire of carriage); see also *Aslan v Imperial Airways Ltd* (1933) 149 LT 276 (no absolute warranty of airworthiness).

4 I.e. the liability imposed by the Civil Aviation Act 1982 s 76(2): see PARA 654.

5 See PARA 654.

6 Cf *Baumwoll Manufactur von Carl Scheibler v Furness* [1893] AC 8, HL. Common law liabilities fall generally on the person who, by himself or his servants, is in control. As to common law liabilities which may arise see PARA 647 et seq.

7 See **BAILMENT**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(5) DEALINGS WITH AIRCRAFT/(ii) Charter of Aircraft/435. Time and voyage charters.

435. Time and voyage charters.

The rights and liabilities¹ of the owner and charterer inter se depend, in a time and voyage charter², upon the terms of the particular contract, but it is thought that in the absence of express terms, where the contract does not operate by way of demise, the owner impliedly undertakes that the aircraft is and will be as fit for the purpose for which it is chartered as reasonable care and skill can make it³, that the crew are properly qualified, and that reasonable care and skill will be exercised in the carriage of the passengers or goods, as the case may be⁴. It would be rare for a commercial time and voyage charter not to be based upon a written agreement.

As between the owner of an aircraft and a time and voyage charterer, it is unusual for the charterer to be a contracting carrier, since the standard form of charter agreement usually provides that the time and voyage charterer contracts as agent only for the passengers, who contract as principals with the owner of the aircraft for their carriage. There are usually express contractual terms confirming this relationship in the contracts between most tour operators and the passengers to be carried pursuant to charter arrangements made by them⁵.

Similarly, any common law liability which arises in respect of damage caused to persons or property on the surface falls upon the owner of the aircraft⁶.

1 As to the common law liabilities which may arise see PARA 647 et seq. See also *Romulus Films Ltd v William Dempster Ltd* [1952] 2 Lloyd's Rep 535, a case as to the damages recoverable for delay in performing a charter contract.

2 These charters are also known as 'wet charters' or 'wet leases': see PARA 433.

3 See *Aslan v Imperial Airways Ltd* (1933) 149 LT 276; cf *Hyman v Nye* (1881) 6 QBD 685; *Readhead v Midland Rly Co* (1867) LR 2 QB 412 (on appeal (1869) LR 4 QB 379). Cf also *Reed v Dean* [1949] 1 KB 188.

4 See *Fosbroke-Hobbes v Airwork Ltd and British-American Air Services Ltd* [1937] 1 All ER 108.

5 I.e. in most time and voyage charters the charterer will not be a carrier for the purposes of the carriage by air legislation: see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 131.

6 Cf PARA 434. As to common law liabilities see PARA 647 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/5. AIRCRAFT/(5) DEALINGS WITH AIRCRAFT/(iii) Powers of Detention/436. Powers of detention of aircraft.

(iii) Powers of Detention

436. Powers of detention of aircraft.

The Civil Aviation Authority ('CAA')¹ and other authorised persons have wide powers to give instructions and take steps by way of detention or otherwise in order to prevent the flight of an aircraft where the contravention of particular provisions of the Air Navigation Order 2005² is apprehended or where other specified conditions are satisfied³.

There is also power to detain in the United Kingdom⁴ foreign aircraft which are alleged to infringe patents or designs entitled to protection in the United Kingdom⁵. Aircraft and their spare parts may, however, be exempt from seizure on patent claims where a declaration has been made by Order in Council that the benefits of the provisions of the Chicago Convention which confer exemption from seizure on such claims apply to the country or territory in which the aircraft is registered⁶.

Aircraft in respect of which default is made in the payment of airport charges at specified aerodromes, whether they be the particular aircraft in respect of which the default was made or aircraft of which the person in default is the operator, may be detained and sold⁷.

Other powers of detention arise where it is suspected that a breach of an air transport licence⁸ or a failure to comply with emissions certification requirements⁹ or noise certification requirements¹⁰ is about to take place, and to enforce customs and excise requirements¹¹ or international civil aviation agreements¹².

The registration of an aircraft mortgage does not give the registered mortgage any priority over any statutory right of detention¹³.

1 As to the CAA see PARA 50 et seq.

2 I.e the Air Navigation Order 2005, SI 2005/1970.

3 See the Air Navigation Order 2005, SI 2005/1970, art 144; and PARA 528.

4 As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 See the Civil Aviation Act 1982 s 89(5), Sch 12. See also **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 515.

6 See the Civil Aviation Act 1982 s 89(1)-(4); the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) art 27; and **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 515. As to the countries to which the provisions apply see the Aircraft (Exemption from Seizure on Patents Claims) Order 1977, SI 1977/829. As to the Chicago Convention see PARA 2 et seq.

7 See the Civil Aviation Act 1982 s 88; *R v Civil Aviation Authority, ex p Emery Air Freight Corp* (1988) 1 S & B Av R IV/105, (1988) Times, 13 January, CA; *Havelet Leasing Ltd v Cardiff-Wales Airport Ltd* (1988) 1 S & B Av R IV/111 (charges must relate to a specific aircraft); *Bristol Airport plc v Powdrill* [1990] Ch 744, [1990] 2 All ER 493, 1 S & B Av R IV/121, CA; and PARAS 257-258.

8 See the Civil Aviation Act 1982 s 64(7); and PARA 126.

9 See the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 18(1); and PARA 394.

10 See the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 28(a); the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 18(1); and PARA 404.

11 See the Customs and Excise Management Act 1979 ss 29, 34; PARA 314; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 947, 949.

12 See the Aviation and Maritime Security Act 1990 s 48; and PARA 334.

13 See the Mortgaging of Aircraft Order 1972, SI 1972/1268, art 14(5); and PARA 432.

UPDATE

436 Powers of detention of aircraft

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTES 9, 10--SI 2002/798 art 18(1) now Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, art 24(1), (2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/ (1) AIR OPERATORS/437. Air operators.

6. OPERATORS AND CREW

(1) AIR OPERATORS

437. Air operators.

The 'operator', in relation to an aircraft, means the person who for the time being has the management of the aircraft¹. However, this definition is qualified in so far as the provisions of the Air Navigation Order 2005 relating to airworthiness and equipment² are concerned. Thus when by virtue of any charter or other agreement for the hire or loan of an aircraft a person other than an air transport undertaking³ or an aerial work undertaking⁴ has the management of that aircraft for a period not exceeding 14 days, the agreement is deemed, for the purpose of determining who is the operator, not to have been entered into⁵.

1 See the Civil Aviation Act 1982 s 105(1); and the Air Navigation Order 2005, SI 2005/1970, art 155(1), (3) (which is expressed to be subject to art 155(4): see the text and notes 2-5). Cognate expressions must be construed accordingly: art 155(3). As to air operator's certificates see PARAS 99-100.

2 Ie the Air Navigation Order 2005, SI 2005/1970, Pt 3 (arts 8-19): see PARAS 376-410.

3 As to the meaning of 'air transport undertaking' see PARA 363 note 7.

4 As to the meaning of 'aerial work undertaking' see PARA 364.

5 See the Air Navigation Order 2005, SI 2005/1970, art 155(1), (4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/438. Age restriction.

(2) AIRCRAFT CREW

(i) Personnel Licensing

438. Age restriction.

No person under the age of 17 years may have the sole control of any aircraft in motion¹ and no person under the age of 16 years may act as pilot in command of a glider².

¹ This is the minimum age at which a person may hold the necessary pilot's licence: see the Air Navigation Order 2005, SI 2005/1970, arts 26(1), (3), 27(1), Sch 8 Pt A Section 1(1). See further PARA 439 et seq. Contravention is an offence and the penalty on summary conviction is a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 8. However, a person may within the United Kingdom, the Channel Islands, and the Isle of Man, act as pilot in command of an aircraft for the purpose of becoming qualified for the grant or renewal of a pilot's licence or the inclusion or variation of any rating in a pilot's licence, if he is at least 16 years of age: art 26(2)(b)(i). As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the meaning of 'pilot in command' see PARA 456.

² Air Navigation Order 2005, SI 2005/1970, art 37.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/439. Necessity for licences for members of flight crews.

439. Necessity for licences for members of flight crews.

No person may act as a member of the flight crew¹ of an aircraft registered in the United Kingdom² unless he holds an appropriate licence³ granted or rendered valid under the Air Navigation Order 2005⁴.

No person may act as a member of the flight crew of an aircraft registered outside the United Kingdom unless (1) in the case of an aircraft flying for the purpose of public transport⁵ or aerial work⁶, he holds an appropriate licence granted or rendered valid under the law of the country in which the aircraft is registered or the state of the operator⁷; or (2) in the case of any other aircraft, he holds an appropriate licence granted or rendered valid under the law of the country in which the aircraft is registered or under the Air Navigation Order 2005, and the Civil Aviation Authority ('CAA')⁸ does not give a direction to the contrary⁹.

A licence granted under the law of a contracting state¹⁰ other than the United Kingdom (but which is not a JAA licence¹¹) or a licence granted under the law of a relevant overseas territory¹², purporting in either case to authorise the holder of the licence to act as a member of the flight crew of an aircraft, not being a licence purporting to authorise him to act as a student pilot only, is deemed to be a licence rendered valid under the Air Navigation Order 2005 unless the CAA gives a direction to the contrary, but does not entitle the holder¹³:

- 344 (a) to act as a member of the flight crew of any aircraft flying for the purpose of public transport or aerial work or on any flight in respect of which he receives remuneration for his services as a member of the flight crew¹⁴; or
- 345 (b) in the case of a pilot's licence, to act as pilot of any aircraft flying in controlled airspace¹⁵ in circumstances requiring compliance with the instrument flight rules¹⁶ or to give any instruction in flying¹⁷.

A JAA licence is deemed to be a licence rendered valid under the Air Navigation Order 2005 unless the CAA gives a direction to the contrary¹⁸.

No licence need be held by a person acting as a member of a flight crew of a glider unless the person acts as a flight radiotelephony operator, or the flight is for the purpose of public transport or aerial work¹⁹.

1 As to the meaning of 'flight crew' see PARA 456. As to the flight crew generally see PARAS 456-462.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to aircraft registered in the United Kingdom see PARA 367 et seq.

3 'Appropriate licence' means a licence which entitles the holder to perform the functions which he undertakes in relation to the aircraft concerned and the flight on which it is engaged: Air Navigation Order 2005, SI 2005/1970, art 26(9).

4 Air Navigation Order 2005, SI 2005/1970, art 26(1). As to the grant and validation of such licences see PARAS 443-452. A person who contravenes the provisions of art 26 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. For the power to direct that an aircraft is not to fly if the provisions of art 26 are not complied with see art 144(1); and PARA 528. For exceptions to the necessity to hold a licence see PARA 440.

5 As to the meaning of 'public transport aircraft' see PARA 363.

6 As to the meaning of 'aerial work' see PARA 364.

7 Air Navigation Order 2005, SI 2005/1970, art 26(3)(a). As to the meaning of 'state of the operator' see PARA 376 note 4; and as to the meaning of 'operator' see PARA 437.

8 As to the CAA see PARA 50 et seq.

9 Air Navigation Order 2005, SI 2005/1970, art 26(3)(b). Failure to comply with a direction is an offence: see arts 147, 148, Sch 14.

10 As to the meaning of 'contracting state' see PARA 367 note 4.

11 'JAA licence' means a flight crew licence granted under JAR-FCL 1 or 2 by the competent authority of a JAA full member state in accordance with a procedure which has been assessed as satisfactory following an inspection by a licensing and a medical standardisation team of the JAA: Air Navigation Order 2005, SI 2005/1970, art 155(1). 'JAR-FCL 1' means the Joint Aviation Requirement of the JAA bearing that title including Amendment 5 adopted by the JAA on 1 March 2006; and 'JAR-FCL 2' means the Joint Aviation Requirement of the JAA bearing that title including Amendment 3 adopted by the JAA on 1 September 2003: Air Navigation Order 2005, SI 2005/1970, art 155(1) (definition of 'JAR-FCL 1' substituted by SI 2007/274). 'JAA' means the Joint Aviation Authorities, an associated body of the European Civil Aviation Conference; and 'JAA full member state' means a state which is a full member of the JAA: Air Navigation Order 2005, SI 2005/1970, art 155(1); as to JAA and JAR see PARA 24.

12 'Relevant overseas territory' means any colony and any country or place outside Her Majesty's dominions in which for the time being Her Majesty has jurisdiction: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to colonies and Her Majesty's dominions see **COMMONWEALTH** vol 13 (2009) PARAS 705, 707.

13 Air Navigation Order 2005, SI 2005/1970, art 26(4)(a).

14 Air Navigation Order 2005, SI 2005/1970, art 26(4)(a)(i).

15 As to the meaning of 'controlled airspace' see PARA 547.

16 'Instrument flight rules' means instrument flight rules prescribed by the Rules of the Air: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the instrument flight rules see PARAS 552-557. As to the Rules of the Air see PARA 357.

17 Air Navigation Order 2005, SI 2005/1970, art 26(4)(a)(ii).

18 Air Navigation Order 2005, SI 2005/1970, art 26(4)(b).

19 See the Air Navigation Order 2005, SI 2005/1970, art 26(9). If the aerial work consists of the giving of instruction in flying in a glider owned or operated by a flying club of which the person giving and the person receiving instruction are both members, the licence is not required: see art 26(10)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/440. Exceptions to the necessity for licences for members of flight crews.

440. Exceptions to the necessity for licences for members of flight crews.

Within the United Kingdom, the Channel Islands, and the Isle of Man, and subject to a series of conditions, a person may without holding an appropriate licence granted or rendered valid under the Air Navigation Order 2005¹ act as a flight radiotelephony operator², or as pilot in command of an aircraft for the purpose of becoming qualified for the grant or renewal of a pilot's licence or the inclusion or variation of any rating in such a licence³, or as pilot in command of a helicopter or gyroplane at night⁴, or as pilot in command of a balloon⁵.

Unless the certificate of airworthiness⁶ in force in respect of the aircraft otherwise requires, a person who does not hold an appropriate licence granted or rendered valid under the Air Navigation Order 2005⁷ may act as pilot of an aircraft registered in the United Kingdom⁸ for the purpose of undergoing training or tests for the grant or renewal of a pilot's licence or for the inclusion, renewal or extension of a rating⁹ if the following conditions are complied with¹⁰:

- 346 (1) no other person is to be carried in the aircraft or in an aircraft being towed by it except a person carried as a member of the flight crew¹¹, a person authorised by the Civil Aviation Authority ('CAA')¹² to witness or conduct such training or tests, or, if the pilot in command of the aircraft holds an appropriate licence, a person carried for the purpose of being trained or tested as a member of the flight crew¹³;
- 347 (2) the person acting as the pilot of the aircraft without holding the appropriate licence must either have been serving as a qualified pilot in Her Majesty's forces within the preceding six months and not be aware of any deterioration in his physical fitness rendering him unfit for the licence for which he intends to qualify, or hold a pilot's, flight navigator's or flight engineer's licence and be undergoing the training or test to qualify for a pilot's licence or additional rating and be acting under the supervision of a person who holds an appropriate licence¹⁴.

1 As to the necessity to hold a licence see PARA 439.

2 See the Air Navigation Order 2005, SI 2005/1970, art 26(2)(a).

3 See the Air Navigation Order 2005, SI 2005/1970, art 26(2)(b), (c). As to ratings see PARAS 446-448.

4 See the Air Navigation Order 2005, SI 2005/1970, art 26(2)(d).

5 See the Air Navigation Order 2005, SI 2005/1970, art 26(2)(e).

6 As to certificates of airworthiness see PARAS 376-384.

7 See the Air Navigation Order 2005, SI 2005/1970. As to the necessity for licences see PARA 439.

8 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to aircraft registered in the United Kingdom see PARA 367 et seq.

9 As to ratings see PARAS 446-448.

10 See the Air Navigation Order 2005, SI 2005/1970, art 26(1), (5). For the penalty for non-compliance with the provisions of art 26 see PARA 439 note 4.

11 As to the meaning of 'flight crew' see PARA 456. As to the flight crew generally see PARAS 456-462.

12 As to the CAA see PARA 50 et seq.

- 13 Air Navigation Order 2005, SI 2005/1970, art 26(6)(a).
- 14 Air Navigation Order 2005, SI 2005/1970, art 26(6)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/441. Practice flights to qualify for flight navigator's or flight engineer's licence.

441. Practice flights to qualify for flight navigator's or flight engineer's licence.

A person may act as a member of the flight crew¹ (otherwise than as a pilot) of an aircraft registered in the United Kingdom² for the purposes of undergoing training or tests for the grant or renewal of a flight navigator's or a flight engineer's licence or for the inclusion, renewal or extension of a rating³, without being the holder of an appropriate licence, if he acts under the supervision and in the presence of another person who is the holder of the type of licence or rating for which the person undergoing the training or tests is being trained or tested⁴.

1 As to the meaning of 'flight crew' see PARA 456. As to the flight crew generally see PARAS 456-462.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to aircraft registered in the United Kingdom see PARA 367 et seq.

3 As to ratings see PARAS 446-448.

4 Air Navigation Order 2005, SI 2005/1970, art 26(7).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/442. Members of forces in flight crews.

442. Members of forces in flight crews.

A person may act as a member of the flight crew¹ of an aircraft registered in the United Kingdom² without being the holder of an appropriate licence if he is acting in the course of his duty as a member of any of Her Majesty's naval, military or air forces³.

1 As to the meaning of 'flight crew' see PARA 456. As to the flight crew generally see PARAS 456-462.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to aircraft registered in the United Kingdom see PARA 367 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 26(8).

UPDATE

442 Members of forces in flight crews

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/443. Endorsement as to international standards.

443. Endorsement as to international standards.

Where a licence is endorsed to the effect that the holder does not satisfy in full the relevant international standard, the holder may not act as a member of the flight crew¹:

- 348 (1) of an aircraft registered in the United Kingdom² in or over the territory of a contracting state³, except if the aircraft is in or over the United Kingdom or in accordance with permission granted by the competent authorities⁴ of that state⁵; or
- 349 (2) of any aircraft in or over the United Kingdom except in accordance with permission granted by the Civil Aviation Authority, irrespective that the licence has been granted or rendered valid under the law of a contracting state other than the United Kingdom, whether or not the licence is or is deemed to be rendered valid under the Air Navigation Order 2005⁶.

1 As to the meaning of 'flight crew' see PARA 456. As to the flight crew generally see PARAS 456-462.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 As to the meaning of 'contracting state' see PARA 367 note 4.

4 As to the meaning of 'competent authority' see PARA 415 note 9.

5 Air Navigation Order 2005, SI 2005/1970, art 26(11)(a). As to the penalty for non-compliance with the provisions of art 26 see PARA 439 note 4.

6 Air Navigation Order 2005, SI 2005/1970, art 26(11)(b). See note 5.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/444. Classes of licence.

444. Classes of licence.

The Civil Aviation Authority ('CAA')¹ may grant licences, subject to such conditions as it thinks fit, in a variety of classes for pilots, flight navigators, flight engineers and flight radiotelephony operators².

A pilot's licence for aeroplanes may be a private, basic commercial, commercial, or airline transport pilot's licence³; a pilot's licence for helicopters and gyroplanes may be a private, commercial or airline transport pilot's licence⁴; a pilot's licence may be a private pilot's licence for balloons and airships or a commercial pilot's licence for airships or for balloons⁵; or a pilot's licence may be a commercial pilot's licence for gliders⁶.

There is only one type of flight navigator's licence, one type of flight engineer's licence and one type of flight radiotelephony operator's licence⁷.

1 As to the CAA see PARA 50 et seq.

2 Air Navigation Order 2005, SI 2005/1970, art 27(1). For the classes see art 27, Sch 8 Pt A.

3 See the Air Navigation Order 2005, SI 2005/1970, Sch 8 Pt A Section 1(1) (amended by SI 2007/3467). The CAA is not permitted on or after 1 July 2000 to grant a United Kingdom private pilot's licence (aeroplanes) to any person who was not on 30 June 2000 the holder of such a licence (see the Air Navigation Order 2005, SI 2005/1970, art 27(2)(a)); nor after 1 July 2000 to grant a United Kingdom basic commercial pilot's licence (aeroplanes) to any person who was not on 30 June 2000 the holder of such a licence (see art 27(2)(b)); nor after 1 July 2002 to grant a United Kingdom commercial pilot's licence (aeroplanes) or a United Kingdom airline transport pilot's licence (aeroplanes) to any person who was not on 30 June 2002 the holder of such a licence (see art 27(2)(d)). After the respective dates set out above all licences will only be issued as JAA licences. As to the meaning of 'JAA licence' see PARA 439 note 15.

4 See the Air Navigation Order 2005, SI 2005/1970, Sch 8 Pt A Section 1(2) (amended by SI 2007/274). The CAA is not permitted on or after 1 January 2001 to grant a United Kingdom private pilot's licence (helicopters) to any person who was not on 31 December 2000 the holder of such a licence: Air Navigation Order 2005, SI 2005/1970, art 27(2)(c). The CAA is not permitted on or after 1 January 2003 to grant a United Kingdom commercial pilot's licence (helicopters) or a United Kingdom airline transport pilot's licence (helicopters) to any person who was not on 31 December 2002 the holder of such a licence: art 27(2)(e). After the respective dates set out above all licences will only be issued as JAA licences.

5 See the Air Navigation Order 2005, SI 2005/1970, Sch 8 Pt A Section 1(3).

6 See the Air Navigation Order 2005, SI 2005/1970, Sch 8 Pt A Section 1(4).

7 See the Air Navigation Order 2005, SI 2005/1970, Sch 8 Pt A Section 1(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/445. Criteria for grant of licences.

445. Criteria for grant of licences.

Before granting a licence to act as a member of a flight crew¹, the Civil Aviation Authority ('CAA')² must be satisfied that the applicant is a fit person to hold the licence and is qualified by reason of his knowledge, experience, competence, skill, physical and mental fitness to act in the capacity to which the licence relates; for this purpose the applicant must furnish such evidence and undergo such examinations and tests, including in particular medical examinations³, and undertake such courses of training as the CAA may require⁴.

Appeal lies to the county court from any decision of the CAA that a person is not a fit person to hold a licence, except where it bases its decision on any deficiency of the applicant in his knowledge, experience, competence, skill, physical or mental fitness⁵. The CAA must be a respondent to the appeal⁶. If the court reverses the decision, the CAA must give effect to the court's determination⁷.

1 As to the meaning of 'flight crew' see PARA 456. As to the flight crew generally see PARAS 456-462. For the classes of licence see PARA 444.

2 As to the CAA see PARA 50 et seq.

3 See further PARA 450.

4 Air Navigation Order 2005, SI 2005/1970, art 27(1). As to licensing procedure see PARAS 92-97. As to training see PARA 507. The CAA may, for the purposes of Pt 4 (arts 25-37), (1) approve any course of training or instruction; (2) authorise a person to conduct such examinations or tests as it may specify; and (3) approve a person to provide any course of training or instruction: art 33(3).

5 See the Air Navigation Order 2005, SI 2005/1970, art 154(1), (2).

6 See the Air Navigation Order 2005, SI 2005/1970, art 154(5). For the purposes of any provision relating to the time within which an appeal may be brought, the CAA's decision is deemed to have been taken on the date on which it furnished the applicant with a statement of reasons for its decision: see art 154(6).

7 See the Air Navigation Order 2005, SI 2005/1970, art 154(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/446. Privileges and ratings of licences.

446. Privileges and ratings of licences.

Subject to any conditions attached to a licence to act as a member of a flight crew¹ and to any other provisions of the Air Navigation Order 2005², a licence of any class entitles the holder to perform the functions specified in respect of it in the Air Navigation Order 2005³.

The Civil Aviation Authority ('CAA')⁴ may include in a licence a rating or qualification⁵. The licence must include a valid medical certificate⁶, and in certain cases, a valid certificate of test or experience appropriate to the functions to be performed or to the functions to which the rating relates⁷, or a valid certificate of revalidation⁸.

1 As to the meaning of 'flight crew' see PARA 456. As to the flight crew generally see PARAS 456-462. For the classes of licence see PARA 444.

2 I.e. the Air Navigation Order 2005, SI 2005/1970.

3 See the Air Navigation Order 2005, SI 2005/1970, art 27(7), Sch 8 Pt A.

4 As to the CAA see PARA 50 et seq.

5 See the Air Navigation Order 2005, SI 2005/1970, art 22(4). For the various ratings and their privileges see Sch 8 Pt B (substituted by SI 2007/3467). As to ratings see PARA 447. For exceptions to ratings see PARA 448.

6 See the Air Navigation Order 2005, SI 2005/1970, art 32(1), (2) (art 32 substituted by SI 2007/3467). This does not apply in the case of a national private pilot's licence (aeroplanes) or a flight radiotelephony operator's licence (see the Air Navigation Order 2005, SI 2005/1970, art 32(1) (as so substituted)), although the holder of a national private pilot's licence (aeroplanes) is required to make a medical declaration (see art 32A; and PARA 450). As to medical examinations see PARA 450. Where the holder of a licence knows or suspects that his physical or mental condition renders him temporarily or permanently unfit to perform any of his functions or to act as a member of the flight crew of an aircraft registered in the United Kingdom, he is not entitled to perform such functions: see art 26(4). As to injury, illness or pregnancy see PARA 451.

7 See eg the Air Navigation Order 2005, SI 2005/1970, arts 28-31A. In the case of any United Kingdom licence for which there is no JAR-FCL equivalent other than a United Kingdom basic commercial pilot's licence and a United Kingdom flight engineer's licence, the holder of a pilot's licence is not entitled to exercise the privileges of an aircraft rating specified in Sch 8 Pt B Section 1 and included in the licence on a flight unless the licence bears a valid certificate of test or a valid certificate of experience in respect of the rating, which certificate must in either case be appropriate to the functions he is to perform on that flight in accordance with the Air Navigation Order 2005, SI 2005/1970, Sch 8 Pt C Section 1 and must otherwise comply with that Section: art 28(1), (2) (art 28(2) amended by SI 2007/3467). However, the holder of a private pilot's licence (balloons and airships) is entitled to exercise the privileges of an aircraft rating specified in Sch 8 Pt B Section 1 and included in the licence on a flight when the licence does not bear such a certificate: Air Navigation Order 2005, SI 2005/1970, art 28, art 28(3) (amended by SI 2007/3467). The holder of a United Kingdom private pilot's licence (gyroplanes) is not entitled to exercise the privileges of an aircraft rating specified in the Air Navigation Order 2005, SI 2005/1970, Sch 8 Pt B Section 1 and included in the licence unless the certificate of test or certificate of experience required art 28(2) is included in the personal flying log book required to be kept by him under art 35: art 28(4) (substituted by SI 2007/3467). The holder of a flight navigator's licence is not entitled to perform functions on a flight to which the Air Navigation Order 2005, SI 2005/1970, art 25(9) applies (see PARA 459) unless the licence bears a valid certificate of experience which certificate must be appropriate to the functions he is to perform on that flight in accordance with Sch 8 Pt C Section 1 and must otherwise comply with Sch 8 Pt C: arts 28(5), 28A (art 28A added by SI 2007/3467). A person is not entitled to perform the functions to which a flying instructor's rating (gyroplanes), an assistant flying instructor's rating (gyroplanes) or an instrument meteorological conditions rating (aeroplanes) relates unless his licence bears a valid certificate of test, which certificate must be appropriate to the functions to which the rating relates in accordance with Sch 8 Pt C Section 1 and must otherwise comply with Sch 8 Pt C: art 31(1). 'United Kingdom licence' means a licence included in Sch 8 Pt A Section 1; and 'United Kingdom licence for which there is no JAR-FCL equivalent' means any licence included in Sch 8 Pt A Section 1 other than any such licence which is a United Kingdom licence for which there is a JAR-FCL equivalent: art 155(1). 'United Kingdom licence for which there is a JAR-FCL equivalent'

means the following licences included in Sch 8 Pt A Section 1: private pilot's licence (aeroplanes); commercial pilot's licence (aeroplanes); airline transport pilot's licence (aeroplanes); private pilot's licence (helicopters); commercial pilot's licence (helicopters and gyroplanes); airline transport pilot's licence (helicopters and gyroplanes): art 155(1). As to the meaning of 'JAR-FCL licence' see PARA 428 note 4. As to JAR-FCL licences generally see art 29, Sch 8 Pt A Section 2 (amended by SI 2007/274; and SI 2007/3467).

Where the holder of a licence fails a test, he is not entitled to fly in the capacity for which that test would have qualified him had he passed it: Air Navigation Order 2005, SI 2005/1970, art 33(1). As to certificates of test or experience see Sch 8 Pt C Section 1 (amended by SI 2007/3467). As to the approval of courses and instruction see PARA 445 note 4.

8 See the Air Navigation Order 2005, SI 2005/1970, art 29 (amended by SI 2007/3467) (maintenance of privileges of aircraft ratings in JAR-FCL licences, United Kingdom licences for which there are JAR-FCL equivalents, United Kingdom basic commercial pilot's licences and United Kingdom flight engineer's licences), the Air Navigation Order 2005, SI 2005/1970, art 31(2) (substituted by SI 2007/3467) (maintenance of privileges of certain other ratings), the Air Navigation Order 2005, SI 2005/1970, art 31A (added by SI 2007/3467) (maintenance of privileges of ratings specified in the Air Navigation Order 2005, SI 2005/1970, Sch 8 Pt B Section 2). As to the meaning of 'JAR-FCL licence' see PARA 428 note 4. As to certificates of revalidation see Sch 8 Pt C Section 2 (amended by SI 2007/3467).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/447. Ratings.

447. Ratings.

Where the Civil Aviation Authority ('CAA')¹ is satisfied that the applicant for a United Kingdom licence or a JAR-FCL licence² is qualified by reason of his knowledge, experience, competence, skill and physical and mental fitness to act in the capacity to which a rating or qualification³ relates, the CAA may include that rating or qualification in the licence subject to such conditions as it thinks fit; the rating or qualification is then deemed to form part of the licence and entitles the holder to perform the functions attaching to that rating⁴.

The CAA may, subject to such conditions as it thinks fit, include in any United Kingdom licence, JAR-FCL licence or national private pilot's licence (aeroplanes), any specified⁵ rating, upon being satisfied that the applicant is qualified by reason of his knowledge, experience, competence, skill and physical and mental fitness to act in the capacity to which the rating relates, and any such rating is deemed to form part of the licence⁶.

1 As to the CAA see PARA 50 et seq.

2 For the classes of licence see PARA 444. As to the meaning of 'United Kingdom licence' see PARA 446 note 7; and as to the meaning of 'JAR-FCL licence' see PARA 428 note 4.

3 As to the ratings and qualifications and the privileges attaching to them see the Air Navigation Order 2005, SI 2005/1970, Sch 8 Pt B Section 1 (Sch 8 Pt B substituted by SI 2007/3467).

4 See the Air Navigation Order 2005, SI 2005/1970, art 27(4) (substituted by SI 2007/3467).

5 As to such ratings and qualifications and the privileges attaching to them see the Air Navigation Order 2005, SI 2005/1970, Sch 8 Pt B Section 2 (as substituted: see note 3).

6 Air Navigation Order 2005, SI 2005/1970, art 27(4A) (added by SI 2007/3467).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/448. Exceptions to ratings.

448. Exceptions to ratings.

Nothing in the Air Navigation Order 2005¹ prohibits the holder of a pilot's licence from acting as pilot of an aircraft certificated for a single pilot operation² when, with the permission of the Civil Aviation Authority ('CAA'), he is testing a person for specified purposes³, notwithstanding that the type of aircraft in which the test is conducted is not specified in the aircraft rating in the pilot's licence or that the licence or personal flying log book does not include a valid certificate of test, experience or revalidation in respect of that type of aircraft⁴.

1 I.e. the Air Navigation Order 2005, SI 2005/1970.

2 'Certificated for single pilot operation' means an aircraft which is not required to carry more than one pilot by virtue of any one or more of the following: (1) the certificate of airworthiness duly issued or rendered valid under the law of the country in which the aircraft is registered or the related flight manual; (2) if no certificate of airworthiness is required to be in force, the certificate of airworthiness, if any, last in force in respect of the aircraft or the related flight manual; (3) if no certificate of airworthiness is or has previously been in force but the aircraft is identical in design with an aircraft in respect of which such a certificate is or has been in force, the certificate of airworthiness which is or has been in force in respect of such an identical aircraft or the related flight manual; or (4) in the case of an aircraft flying in accordance with the conditions of a permit to fly issued by the Civil Aviation Authority ('CAA'), that permit to fly: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the CAA see PARA 50 et seq. As to certificates of airworthiness see PARAS 376-384. As to the meaning of 'flight manual' see PARA 376 note 8. As to permits to fly see PARA 385 et seq.

3 I.e. for the purposes of the Air Navigation Order 2005, SI 2005/1970, art 27(1) (see PARA 445), art 27(4) (see PARA 447), art 28(2) (see PARA 446), art 29(2) (see PARA 446) or art 31 (see PARA 446).

4 Air Navigation Order 2005, SI 2005/1970, art 33(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/449. Validity and renewal of licences.

449. Validity and renewal of licences.

A licence to act as a member of a flight crew¹ is not valid unless it bears the ordinary signature of the holder in ink or indelible pencil².

The licence remains in force for the period indicated in the licence, not exceeding the period specified in the Air Navigation Order 2005³. It may be renewed by the Civil Aviation Authority⁴ from time to time upon its being satisfied that the applicant is a fit person and is duly qualified⁵. If no period is indicated in the licence, it remains in force for the lifetime of the holder⁶. It may not be granted to any person who is under the minimum age specified for the particular class of licence⁷.

1 As to the meaning of 'flight crew' see PARA 456. As to the flight crew generally see PARAS 456-462. For the classes of licence see PARA 444.

2 Air Navigation Order 2005, SI 2005/1970, art 27(3)(a).

3 Air Navigation Order 2005, SI 2005/1970, art 27(3)(b)(i). This is expressed to be subject to art 92 (revocation, suspension and variation of certificates, licences and other documents: see PARA 490). For the periods of validity see Sch 8 Pt A (amended by SI 2007/274).

4 As to the CAA see PARA 50 et seq.

5 Air Navigation Order 2005, SI 2005/1970, art 27(3)(b)(i).

6 Air Navigation Order 2005, SI 2005/1970, art 27(3)(b)(ii).

7 Air Navigation Order 2005, SI 2005/1970, art 27(3)(c).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/450. Medical examinations and declarations.

450. Medical examinations and declarations.

Every applicant for or holder of a licence to act as a member of a flight crew¹ granted by the Civil Aviation Authority ('CAA')² must, whenever the CAA requires, submit himself to medical examination by a person approved by the CAA either generally or in a particular case or class of cases, who must make a report to the CAA in such form as the CAA may require³. On the basis of such medical examination, the CAA or any person approved by it as competent to do so may issue a medical certificate subject to such conditions as it or he thinks fit to the effect that it or he has assessed the holder of the licence as meeting the requirements specified by the CAA in respect of the certificate⁴.

A medical certificate will be valid for such period as is specified in the certificate⁵ and is deemed to form part of the licence⁶.

The holder of a national private pilot's licence (aeroplanes) is not entitled to exercise any of the privileges of the licence unless he has either a valid medical certificate⁷ or a valid medical declaration⁸. A medical declaration is valid if (1) the applicant has signed a statement in the declaration that he believes himself to meet the requirements to fly having regard to the standards specified by the CAA in the declaration; (2) the applicant reasonably holds that belief; (3) the applicant has authorised his general practitioner to review his medical records; (4) his general practitioner has signed a statement in the declaration that, having seen those medical records, he is satisfied that there is nothing in the pilot's medical history which prevents him from meeting the medical standards specified in the declaration; and (5) the validity period of the declaration has not expired⁹.

1 As to the meaning of 'flight crew' see PARA 456. As to the flight crew generally see PARAS 456-462. For the classes of licence see PARA 444.

2 As to the CAA see PARA 50 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 32(3) (art 32 substituted by SI 2007/3467). As to the approval of persons who are to furnish reports, and the acceptance of such reports see the Air Navigation Order 2005, SI 2005/1970, art 165.

4 Air Navigation Order 2005, SI 2005/1970, art 32(4) (as substituted: see note 3). However, the holder of a national private pilot's licence (aeroplanes) or a flight radiotelephony operator's licence is entitled to perform any of the functions to which his licence relates notwithstanding that his licence does not include an appropriate valid medical certificate: see art 32(1) (as so substituted).

5 Air Navigation Order 2005, SI 2005/1970, art 32(5) (as substituted: see note 3). This is without prejudice to art 32B(3) (see PARA 451).

6 Air Navigation Order 2005, SI 2005/1970, art 32(6) (as substituted: see note 3).

7 I.e. a medical certificate which is valid in accordance with the Air Navigation Order 2005, SI 2005/1970, art 32.

8 Air Navigation Order 2005, SI 2005/1970, art 32A(1) (art 32A added by SI 2007/3467).

9 Air Navigation Order 2005, SI 2005/1970, art 32A(2) (as added: see note 8). The validity period of a medical declaration commences on the date it is signed by the general practitioner and is as specified in art 32A Table: art 32A(3) (as so added).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/451. Injury, illness or pregnancy.

451. Injury, illness or pregnancy.

A person is not entitled to act as a member of the flight crew¹ of an aircraft registered in the United Kingdom² if he knows or suspects that his physical or mental condition renders him temporarily or permanently unfit to perform such functions or to act in such capacity³.

The holder of a licence to act as a member of a flight crew with a medical certificate⁴ who suffers any personal injury, or illness of 21 days or more, involving incapacity to undertake the functions to which his licence relates, or who, in the case of a woman, has reason to believe that she is pregnant, must inform the Civil Aviation Authority ('CAA')⁵ in writing of the injury or pregnancy as soon as possible or of the illness as soon as 21 days have elapsed⁶.

The medical certificate is deemed to be suspended upon the occurrence of such an injury or the expiry of a 21-day period of such illness or the confirmation of the pregnancy⁷. In the case of injury or illness, the suspension ceases upon the holder being medically examined and pronounced fit to resume his functions, or upon the CAA exempting the holder from the requirement of a medical examination, subject to such conditions as the CAA thinks fit⁸.

Where a pregnancy is confirmed, the suspension may be lifted for such period and subject to such conditions as the CAA thinks fit; and it ceases when the holder has been medically examined after the pregnancy has ended and she has been pronounced fit to resume her functions⁹.

1 As to the meaning of 'flight crew' see PARA 456. As to the flight crew generally see PARAS 456-462. For the classes of licence see PARA 444.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft in the United Kingdom see PARA 367 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 32B(1) (art 32B added by SI 2007/3467).

4 This restriction applies only in relation to holders of licences which include medical certificates and therefore does not apply to a national private pilot's licence (aeroplanes) or a flight radiotelephony operator's licence: see the Air Navigation Order 2005, SI 2005/1970, art 32(1), (2); and PARA 450.

5 As to the CAA see PARA 50 et seq.

6 Air Navigation Order 2005, SI 2005/1970, art 32B(2) (as added: see note 3).

7 Air Navigation Order 2005, SI 2005/1970, art 32B(3) (as added: see note 3).

8 Air Navigation Order 2005, SI 2005/1970, art 32B(4) (as added: see note 3). The CAA makes the arrangements under which the medical examination takes place: art 32B(4) (as so added).

9 Air Navigation Order 2005, SI 2005/1970, art 32B(5) (as added: see note 3). The CAA makes the arrangements under which the medical examination takes place: art 32B(5) (as so added).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/452. Validation of licences.

452. Validation of licences.

The Civil Aviation Authority ('CAA')¹ may issue a certificate of validation rendering valid for the purposes of the Air Navigation Order 2005² any licence to act as a member of a flight crew³ granted under the law of any country other than the United Kingdom⁴. The CAA must issue a certificate of validation for any licence granted under the law of an EEA state⁵ based on requirements equivalent to those for the equivalent licence granted by the CAA⁶.

1 As to the CAA see PARA 50 et seq.

2 Ie the Air Navigation Order 2005, SI 2005/1970.

3 As to the meaning of 'flight crew' see PARA 456. As to the flight crew generally see PARAS 456-462. For the classes of licence see PARA 444.

4 Air Navigation Order 2005, SI 2005/1970, art 34(1). As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 The CAA may ask the European Commission for an opinion on the equivalence of a licence submitted for validation within three weeks of receipt by the CAA of all necessary information in respect of an application for validation: Air Navigation Order 2005, SI 2005/1970, art 34(4)(a). If the CAA does not ask the Commission for such an opinion, the CAA must within three months of receiving all necessary information either issue the certificate of validation or inform the applicant of any additional requirements or tests required: art 34(4)(b). As to the determination of the equivalence of licences see also art 34(5), (6).

6 Air Navigation Order 2005, SI 2005/1970, art 34(2), (3). A licence is granted by the CAA under art 22: see PARA 445 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/453. Personal flying log books.

453. Personal flying log books.

Every member of the flight crew¹ of an aircraft registered in the United Kingdom², and every person who engages in flying for the purpose of qualifying for the grant or renewal of a licence to be such a member, must keep a personal flying log book³.

The personal flying log book must contain particulars of the holder's name and address, of any licence he holds, and of the name and address of his employer (if any)⁴. Particulars of each flight during which he acted as a member of the flight crew of the aircraft or for the purpose of qualifying for the grant or renewal of a licence under the Air Navigation Order 2005⁵ must be recorded in the log book at the end of each flight or as soon afterwards as is reasonably practicable, including⁶:

- 350 (1) the date, the places at which the holder embarked on and disembarked from the aircraft, and the time spent during the course of a flight when he was acting in either capacity⁷;
- 351 (2) the type and registration marks of the aircraft⁸;
- 352 (3) the capacity in which the holder acted in flight⁹;
- 353 (4) particulars of any special conditions under which the flight was conducted, including night flying and instrument flying¹⁰; and
- 354 (5) particulars of any test or examination undertaken whilst in flight¹¹.

Particulars of any test or examination taken in a flight simulator¹² must also be recorded in the log book¹³.

1 As to the meaning of 'flight crew' see PARA 456. As to the flight crew generally see PARAS 456-462.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to aircraft registered in the United Kingdom see PARA 367 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 35(1). As to the preservation of the log book see PARA 478.

4 Air Navigation Order 2005, SI 2005/1970, art 35(1)(a)-(c).

5 I.e the Air Navigation Order 2005, SI 2005/1970.

6 Air Navigation Order 2005, SI 2005/1970, art 35(2). For these purposes, a helicopter is deemed to be in flight from the moment the helicopter first moves under its own power for the purpose of taking off until the rotors are next stopped: art 35(3).

7 Air Navigation Order 2005, SI 2005/1970, art 35(2)(a).

8 Air Navigation Order 2005, SI 2005/1970, art 35(2)(b).

9 Air Navigation Order 2005, SI 2005/1970, art 35(2)(c).

10 Air Navigation Order 2005, SI 2005/1970, art 35(2)(d).

11 Air Navigation Order 2005, SI 2005/1970, art 35(2)(e).

12 'Flight simulator' means apparatus by means of which flight conditions in an aircraft are simulated on the ground: Air Navigation Order 2005, SI 2005/1970, art 155(1).

13 Air Navigation Order 2005, SI 2005/1970, art 35(4). The particulars recorded must include: (1) the date of the test or examination; (2) the type of simulator; (3) the capacity in which the holder acted; and (4) the nature of the test or examination: art 35(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/454. Flying instructors.

454. Flying instructors.

No person may give instruction in flying to any person flying or about to fly a flying machine or glider¹ for the purpose of becoming qualified for (1) the grant of a pilot's licence²; and (2) the inclusion or variation of any rating in a pilot's licence³, unless certain requirements are complied with⁴. The requirements are (a) that the instructor holds a duly granted or validated licence or a JAA licence⁵ entitling him to act as pilot in command⁶ of the aircraft for the purpose and in the circumstances under which the instruction is to be given⁷; and (b) that the instructor's licence includes an instructor's rating entitling him to give the instruction⁸.

1 As to the classification of aircraft see PARA 360.

2 Air Navigation Order 2005, SI 2005/1970, art 36(2)(a).

3 Air Navigation Order 2005, SI 2005/1970, art 36(2)(b).

4 Air Navigation Order 2005, SI 2005/1970, art 36(1). A person acting in contravention of art 36 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 As to the meaning of 'JAA licence' see PARA 439 note 15.

6 As to the meaning of 'pilot in command' see PARA 456.

7 Air Navigation Order 2005, SI 2005/1970, art 36(1)(a). As to the grant and validation of licences see PARAS 444-452.

8 Air Navigation Order 2005, SI 2005/1970, art 36(1)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(i) Personnel Licensing/455. Training for landing on or taking off from water.

455. Training for landing on or taking off from water.

A person must not act as pilot in command¹ of an aircraft which takes off from or lands on water unless appropriate training has been completed and recorded in his personal flying log book².

1 As to the meaning of 'pilot in command' see PARA 456.

2 Air Navigation Order 2005, SI 2005/1970, art 32C (added by SI 2007/3467). As to flights over water see PARA 534. As to personal flying log books see PARA 453.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(ii) Crew Requirements/456. Aircraft crew.

(ii) Crew Requirements

456. Aircraft crew.

'Crew' means (1) a member of the flight crew; (2) a person carried on the flight deck who is appointed by the operator¹ of the aircraft to give or to supervise the training, experience, practice and periodical tests required in respect of the flight crew²; or (3) a member of the cabin crew³. 'Flight crew' means those members of the crew of the aircraft who respectively undertake to act as pilot, flight navigator, flight engineer and flight radiotelephony operator of the aircraft⁴. 'Cabin crew', in relation to an aircraft, means those persons on a flight for the purpose of public transport who are carried for the purpose of performing in the interests of the safety of passengers⁵ duties to be assigned by the operator or the commander of the aircraft, but who do not act as a member of the flight crew⁶. 'Commander' means the member of the flight crew designated as commander of the aircraft by the operator of it, or, failing such a person, the person who is for the time being the pilot in command of the aircraft⁷. 'Pilot in command' means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft⁸.

1 As to the meaning of 'operator' see PARA 437.

2 Ie under the Air Navigation Order 2005, SI 2005/1970, art 42(3); see PARA 507.

3 Air Navigation Order 2005, SI 2005/1970, art 155(1).

4 Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the required flight crew for a United Kingdom aircraft see PARA 457.

5 As to the meaning of 'passenger' see PARA 362 note 5.

6 Air Navigation Order 2005, SI 2005/1970, art 155(1). A cabin attendant does not act as a member of the flight crew: see the Air Navigation Order 2005, SI 2005/1970, art 25(13); and PARA 461.

7 Air Navigation Order 2005, SI 2005/1970, art 155(1).

8 Air Navigation Order 2005, SI 2005/1970, art 155(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(ii) Crew Requirements/457. Flight crew for United Kingdom aircraft.

457. Flight crew for United Kingdom aircraft.

No aircraft may fly unless it carries a flight crew of the number and description required by the law of the country in which it is registered¹. An aircraft registered in the United Kingdom² must carry a flight crew³ adequate in number and description to ensure the safety of the aircraft and of at least the number and description specified in the flight manual⁴ or, if it does not now have a flight manual but has done in the past, it must carry a flight crew of at least the number and description specified in that flight manual⁵.

1 Air Navigation Order 2005, SI 2005/1970, art 25(1). A person acting in contravention of art 25 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. For the power to direct that an aircraft must not fly if the provisions as to the flight crew are not complied with see art 144(1)(a); and PARA 528. As to the licensing of the flight crew see PARA 439 et seq.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft in the United Kingdom see PARA 367 et seq.

3 As to the meaning of 'flight crew' see PARA 456.

4 As to the meaning of 'flight manual' see PARA 376 note 8. See also PARAS 376-384.

5 Air Navigation Order 2005, SI 2005/1970, art 25(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(ii) Crew Requirements/458. Carriage of two pilots.

458. Carriage of two pilots.

A flying machine¹ registered in the United Kingdom² and flying for the purpose of public transport³, and having a maximum total weight authorised⁴ exceeding 5,700 kilograms, must carry at least two pilots as members of the flight crew⁵. Both pilots must remain at the controls of the aircraft during take-off and landing⁶.

An aircraft registered in the United Kingdom, flying for the purpose of public transport in circumstances where the aircraft commander must comply with the instrument flight rules⁷, having a maximum total weight authorised of 5,700 kilograms or less and powered by turbine jets, turbine propeller engines or piston engines, must carry at least two pilots as members of the flight crew, unless, in the case of piston engine or turbine propeller engine powered aircraft (with a maximum approved passenger seating configuration of fewer than ten in the latter case), it is equipped with an approved autopilot or is flying under and in accordance with the terms of a police air operator's certificate⁸.

A helicopter registered in the United Kingdom must carry at least two pilots as members of its flight crew if it has a maximum total weight authorised of 5,700 kilograms or less, is flying for the purpose of public transport and is flying in circumstances where the commander is required to comply with the instrument flight rules or is flying at night on a special VFR flight⁹. Such a helicopter is not required to carry two pilots if it is equipped with an autopilot with, at least, altitude hold and heading mode which is serviceable on take-off, it is equipped with such an autopilot notwithstanding that before take-off the approved autopilot is found to be unserviceable, if the helicopter flies in accordance with arrangements approved by the CAA, it is flying under and in accordance with the terms of a police air operator's certificate, or it is flying by day and remains clear of cloud and with the surface in sight¹⁰.

1 As to the classification of aircraft see PARA 360.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft in the United Kingdom see PARA 367 et seq.

3 As to the meaning of 'public transport aircraft' see PARA 363.

4 As to the meaning of 'maximum total weight authorised' see PARA 363 note 9.

5 Air Navigation Order 2005, SI 2005/1970, art 25(3). As to the penalty for contravention of the provisions of art 25 see PARA 456 note 1.

6 See the Air Navigation Order 2005, SI 2005/1970, art 50(2); and PARA 518.

7 As to the instrument flight rules see PARA 552.

8 See the Air Navigation Order 2005, SI 2005/1970, art 25(4), (5), (6)(b). An aeroplane with two or more turbine propeller engines with a maximum approved passenger seating configuration of fewer than ten, or two or more piston engines, which is equipped with an approved autopilot is not required to carry two pilots notwithstanding that before take-off the approved autopilot is found to be unserviceable, if the aeroplane flies in accordance with arrangements approved by the Civil Aviation Authority ('CAA'): art 25(6)(a). As to the CAA see PARA 50 et seq. As to police air operator's certificates see PARAS 99-100.

9 See the Air Navigation Order 2005, SI 2005/1970, art 25(7) (amended by SI 2007/274; and SI 2007/3467). As to the instrument flight rules see PARA 552. As to the meaning of 'special VFR flight' see PARA 550 note 6.

10 See the Air Navigation Order 2005, SI 2005/1970, art 25(8) (amended by SI 2007/274).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(ii) Crew Requirements/459. Carriage of flight navigators.

459. Carriage of flight navigators.

An aircraft registered in the United Kingdom¹ engaged on a flight for the purpose of public transport² must carry either navigational equipment suitable for the route to be flown or a flight navigator as a member of the flight crew³, in addition to any other person who is required to be carried to perform other duties, if on its planned route or planned diversion the aircraft is intended to be more than 500 nautical miles⁴ from the point of take-off and to pass over an area specified for these purposes⁵. The flight navigator must be the holder of an appropriate licence⁶.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft in the United Kingdom see PARA 367 et seq.

2 As to the meaning of 'public transport aircraft' see PARA 363.

3 As to the meaning of 'flight crew' see PARA 456.

4 'Nautical mile' means the international nautical mile (ie a distance of 1,852 metres): Air Navigation Order 2005, SI 2005/1970, art 155(1).

5 Air Navigation Order 2005, SI 2005/1970, art 25(9), (10). The areas specified are the Arctic, Antarctic, Sahara, South America, Pacific Ocean, Australia, Indian Ocean, North Atlantic Ocean, South Atlantic Ocean, Northern Canada, Northern Asia and Southern Asia: see art 25(9), Sch 7. As to the penalty for contravention of the provisions of art 25 see PARA 456 note 1.

6 See the Air Navigation Order 2005, SI 2005/1970, art 27(1), Sch 8 Pt A Section 1(5). As to licensing generally see PARAS 92-97. Flight navigators must be tested by or on behalf of the operator as to their competence to perform their duties: see art 42(3), Sch 9 Pt C para 2(4). As to the training of the flight crew see PARA 507.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(ii) Crew Requirements/460. Carriage of flight radio operators.

460. Carriage of flight radio operators.

An aircraft registered in the United Kingdom¹ and required to be equipped with radio communications apparatus² must carry a flight radiotelephony operator as a member of the flight crew³.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft in the United Kingdom see PARA 367 et seq.

2 Ie required by the provisions of the Air Navigation Order 2005, SI 2005/1970, art 20: see PARA 416.

3 Air Navigation Order 2005, SI 2005/1970, art 25(11). As to the meaning of 'flight crew' see PARA 456. As to the penalty for contravention of the provisions of art 25 see PARA 456 note 1.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(ii) Crew Requirements/461. Cabin crew.

461. Cabin crew.

Where an aircraft registered in the United Kingdom¹ which has a maximum approved passenger seating configuration of more than 19 and on which at least one passenger² is carried on a flight for the purpose of public transport³, the crew⁴ of the aircraft must include cabin crew⁵ carried for the purpose of performing, in the interests of the safety of passengers, duties assigned by the operator⁶ or the commander⁷ of the aircraft but who do not act as members of the flight crew⁸. In such circumstances, the aircraft is required to carry not less than one member of the cabin crew for every 50 or fraction of 50 passenger seats installed in the aircraft, unless the Civil Aviation Authority ('CAA') has granted written permission to the operator to carry a lesser number on that flight and the operator carries the number specified in that permission and complies with any other terms and conditions subject to which such permission is granted⁹.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft in the United Kingdom see PARA 367 et seq.

2 As to the meaning of 'passenger' see PARA 362 note 5.

3 As to the meaning of 'public transport aircraft' see PARA 363.

4 As to the meaning of 'crew' see PARA 456.

5 As to the meaning of 'cabin crew' see PARA 456.

6 As to the meaning of 'operator' see PARA 437.

7 As to the meaning of 'commander' see PARA 456.

8 Air Navigation Order 2005, SI 2005/1970, art 25(12), (13). As to the meaning of 'flight crew' see PARA 456. As to the penalty for contravention of the provisions of the Air Navigation Order 2005, SI 2005/1970, art 25 see PARA 456 note 1.

9 Air Navigation Order 2005, SI 2005/1970, art 25(14). As to the CAA see PARA 50 et seq. As to the carriage of additional crew see PARA 462.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(ii) Crew Requirements/462. Carriage of additional flight crew or cabin crew.

462. Carriage of additional flight crew or cabin crew.

The Civil Aviation Authority ('CAA')¹ may in the interests of safety direct the operator² of any aircraft registered in the United Kingdom³ that all or any of his aircraft when flying in circumstances specified in the direction must carry such additional persons as members of the flight crew⁴ or the cabin crew⁵ as the CAA specifies⁶.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'operator' see PARA 437.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft in the United Kingdom see PARA 367 et seq.

4 As to the meaning of 'flight crew' see PARA 456.

5 As to the meaning of 'cabin crew' see PARA 456.

6 Air Navigation Order 2005, SI 2005/1970, art 25(15). Failure to comply with a direction is an offence: see arts 147, 148, Sch 14. As to the penalty for contravention of the provisions of art 25 see PARA 456 note 1.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iii) Crew Fatigue/463. Application of provisions as to crew fatigue.

(iii) Crew Fatigue

463. Application of provisions as to crew fatigue.

Most of the provisions relating to the fatigue of aircraft crew¹ apply only to an aircraft registered in the United Kingdom² which is either engaged on a flight for the purpose of public transport³ or is operated by an air transport undertaking⁴. In particular, they do not apply in relation to a flight made only for the purpose of instruction in flying by or on behalf of a flying club or flying school, or a person who is not an air transport undertaking⁵.

1 I.e. the Air Navigation Order 2005, SI 2005/1970, arts 82, 83: see PARAS 464-465. As to crew members' entitlement to annual leave, maximum annual working time, rest days and pattern of work, see the Civil Aviation (Working Time) Regulations 2004, SI 2004/756; and PARA 467 et seq.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft in the United Kingdom see PARA 367 et seq.

3 As to the meaning of 'public transport aircraft' see PARA 363.

4 Air Navigation Order 2005, SI 2005/1970, art 81(1). As to the meaning of 'air transport undertaking' see PARA 363 note 7.

5 Air Navigation Order 2005, SI 2005/1970, art 81(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iii) Crew Fatigue/464. Operator's duties as to crew fatigue.

464. Operator's duties as to crew fatigue.

The operator¹ of an aircraft² may not cause or permit that aircraft to make a flight unless he has established a scheme for the regulation of flight times for every person flying in that aircraft as a member of its crew³. The scheme must be approved by the Civil Aviation Authority ('CAA')⁴ and incorporated into the operations manual⁵ or a similar document⁶.

The operator must take all such steps as are reasonably practicable to ensure that the provisions of the scheme will be complied with in relation to every person flying in that aircraft as a member of the crew⁷; and must not cause or permit any person to fly in the aircraft as a member of its crew if he knows, or has reason to believe, that the person is suffering from or, having regard to the circumstances of the flight to be undertaken, is likely to suffer from, such fatigue while he is so flying as may endanger the safety of the aircraft or of its occupants⁸.

The operator must not cause or permit a person to fly as a member of the aircraft's flight crew unless the operator has in his possession an accurate and up-to-date record in respect of that person and in respect of the 28 days⁹ immediately preceding the flight showing all his flight times¹⁰ and brief particulars of the nature of the functions performed by him in the course of his flight times¹¹.

1 As to the meaning of 'operator' see PARA 437.

2 As to the aircraft to which this provision applies see PARA 463.

3 Air Navigation Order 2005, SI 2005/1970, art 82(1)(a). As to the meanings of 'crew' and 'flight crew' see PARA 456. A person acting in contravention of art 82(1), (2) is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.

4 As to the CAA see PARA 50 et seq.

5 As to the operations manual see PARA 509.

6 Air Navigation Order 2005, SI 2005/1970, art 82(1)(b), (c). As to the penalty for contravention see note 3.

7 Air Navigation Order 2005, SI 2005/1970, art 82(1)(d). As to the penalty for contravention see note 3.

8 Air Navigation Order 2005, SI 2005/1970, art 82(2). As to the penalty for contravention see note 3.

9 'Day' means a continuous period of 24 hours beginning at midnight Co-ordinated Universal Time: Air Navigation Order 2005, SI 2005/1970, art 81(3)(b).

10 'Flight time', in relation to any person, means all time spent by that person in (1) a civil aircraft whether or not registered in the United Kingdom (other than an aircraft of which the maximum total weight authorised does not exceed 1,600 kg and which is not flying for the purpose of public transport or aerial work); or (2) a military aircraft (other than such an aircraft of which the maximum total weight authorised does not exceed 1,600 kg and which is flying on a military air experience flight), while it is in flight and he is carried in it as a member of its crew: Air Navigation Order 2005, SI 2005/1970, art 81(3)(a). As to the meaning of 'maximum total weight authorised' see PARA 363 note 9; as to the meaning of 'aerial work' see PARA 364; and as to the meaning of 'flight' see PARA 530. A 'military air experience flight' is a flight by a military aircraft operated under the auspices of the Royal Air Force Air Cadet Organisation for the purpose of providing air experience to its cadets: art 81(3)(d). As to the meaning of 'military aircraft' see PARA 31 note 5. For these purposes, a helicopter is deemed to be in flight from the moment it first moves under its own power for the purpose of taking off until the rotors are next stopped: art 81(3)(c).

11 Air Navigation Order 2005, SI 2005/1970, art 82(3). Subject to art 91 (preservation of documents: see PARA 477), the record must be preserved by the operator of the aircraft until a date 12 months after the relevant flight: art 82(4). If any person contravenes art 82(3) he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iii) Crew Fatigue/465. Crew's responsibilities.

465. Crew's responsibilities.

A person may not act as a member of the crew of an aircraft¹ if he knows or suspects that he is suffering from or, having regard to the circumstances of the flight to be undertaken, is likely to suffer from, such fatigue as may endanger the safety of the aircraft or of its occupants². A person may not act as a member of the flight crew of an aircraft³ unless he ensures that the aircraft operator⁴ is aware of his flight times⁵ during the period of 28 days⁶ preceding the flight⁷.

1 As to the aircraft to which this provision applies see PARA 463. As to the meaning of 'crew' see PARA 456.

2 Air Navigation Order 2005, SI 2005/1970, art 83(1). As to the aircraft operator's duties in respect of the fatigue of the crew see PARA 464. A person acting in contravention of art 83(1) is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.

3 See note 1. As to the meaning of 'flight crew' see PARA 456.

4 As to the meaning of 'operator' see PARA 437.

5 As to the meaning of 'flight time' see PARA 464 note 10.

6 As to the meaning of 'day' see PARA 464 note 9.

7 Air Navigation Order 2005, SI 2005/1970, art 83(2). If any person contravenes art 83(2) he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iii) Crew Fatigue/466. Flight crew's responsibilities as to flight times.

466. Flight crew's responsibilities as to flight times.

A person may not act as a member of the flight crew¹ of an aircraft registered in the United Kingdom² if at the beginning of the flight the aggregate of all his previous flight times³ (1) during the period of 28 consecutive days⁴ expiring at the end of the day on which the flight begins exceeds 100 hours⁵; or (2) during the period of 12 months expiring at the end of the previous month exceeds 900 hours⁶.

These provisions do not apply to a flight which is a private flight⁷ in an aircraft of which the maximum total weight authorised⁸ does not exceed 1,600 kg⁹; nor do they apply to a flight which is not for the purpose of public transport¹⁰ and is not operated by an air transport undertaking¹¹ where, at the time when the flight begins, the aggregate of all the flight times of the member of the flight crew concerned since he was last medically examined and found fit does not exceed 25 hours¹².

1 As to the meaning of 'flight crew' see PARA 456.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft in the United Kingdom see PARA 367 et seq.

3 As to the meaning of 'flight time' see PARA 464 note 10.

4 As to the meaning of 'day' see PARA 464 note 9.

5 Air Navigation Order 2005, SI 2005/1970, art 84(1)(a). If any person contravenes art 84 he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 7.

6 Air Navigation Order 2005, SI 2005/1970, art 84(1)(b). As to the penalty for contravention see note 5.

7 As to the meaning of 'private flight' see PARA 365.

8 As to the meaning of 'maximum total weight authorised' see PARA 363 note 9.

9 Air Navigation Order 2005, SI 2005/1970, art 84(2)(a).

10 As to the meaning of 'public transport aircraft' see PARA 363.

11 As to the meaning of 'air transport undertaking' see PARA 363 note 7.

12 Air Navigation Order 2005, SI 2005/1970, art 84(2)(b). As to medical examinations see PARA 450.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iv) Working Time, Health and Safety of Crew/467. Scope and application of regulations as to working time.

(iv) Working Time, Health and Safety of Crew

467. Scope and application of regulations as to working time.

Regulations have been made¹ to implement the European Union provisions on the organisation of working time of mobile workers². The regulations apply to persons employed to act as crew members³ on board a civil aircraft flying for the purposes of public transport⁴. They impose obligations enforceable by the Civil Aviation Authority ('CAA')⁵ concerning pattern of work, annual leave and rest days⁶, health assessments and health and safety protection at work⁷; and make provision for workforce agreements⁸, the appointment and powers of inspectors⁹, improvement notices and prohibition notices¹⁰, and remedies for crew members where their employer has refused to permit them to exercise any right¹¹. Provision is also made for restrictions on the disclosure of information¹² and offences¹³.

1 See the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, which came into force on 13 April 2004 (see reg 1).

2 See EC Council Directive 2000/79 (OJ L302, 1.12.2000, p 56) concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines, the European Transport Workers' Federation, the European Cockpit Association, the European Regions Airline Association and the International Air Carrier Association.

3 'Crew member' means a person employed to act as a member of the cabin crew or flight crew on board a civil aircraft by an undertaking established in the United Kingdom: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 3. 'Cabin crew' means a person on board a civil aircraft, other than flight crew, who is carried for the purpose of performing in the interests of the safety of the passengers, duties that are assigned to him for that purpose by the operator or the commander of that aircraft; and 'flight crew' means a person employed to act as a pilot, flight navigator, flight engineer or flight radiotelephony operator on board a civil aircraft: reg 3. As to crew generally see PARA 438 et seq.

4 See the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 2. See further PARA 468 et seq. As to the meaning of 'the purposes of public transport' see PARA 363; definition applied by reg 3; Interpretation Act 1978 ss 17(2)(a), 23(1), (2).

5 As to the CAA see PARA 50 et seq.

6 See PARA 468.

7 See PARA 470.

8 See PARA 469.

9 See PARA 471.

10 See PARA 473.

11 See PARA 476.

12 See PARA 472.

13 See PARAS 474-475.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iv) Working Time, Health and Safety of Crew/468. Pattern of work, annual leave and rest days.

468. Pattern of work, annual leave and rest days.

A crew member¹ is entitled to paid annual leave of at least four weeks, or a proportion of four weeks in respect of a period of employment of less than one year². Leave to which a crew member is entitled may be taken in instalments but may not be replaced by a payment in lieu, except where the crew member's employment is terminated³.

In addition, an employer⁴ must ensure that all crew members employed by him are notified in writing as soon as possible of their right to rest days⁵ which are to be free of all employment duties including acting as a standby⁶.

Where an employer intends to organise work⁷ according to a certain pattern he must take into account the general principle of adapting work to the worker to the extent that is relevant to the objective of protecting workers' health and safety⁸. In particular, he must (1) ensure that the pattern affords the crew member adequate rest breaks⁹; and (2) take into account the need to ensure, where practicable, that the pattern offers the crew member work, within the scope of his duties, that alleviates monotony or working at a pre-determined rate¹⁰. When requested to do so by the Civil Aviation Authority ('CAA')¹¹, an employer must provide the CAA with such information as it may specify relating to the working patterns of crew members in his employ¹².

An employer must ensure that in any month (a) no person employed by him acts as a crew member during the course of his working time, if during the period of 12 months expiring at the end of the month before the month in question the aggregate block flying time¹³ of that person exceeds 900 hours; and (b) no crew member employed by him has a total annual working time of more than 2,000 hours during the period of 12 months expiring at the end of the month before the month in question¹⁴.

1 As to the meaning of 'crew member' see PARA 467 note 3.

2 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 4(1). As to a crew member's remedy in respect of not being allowed to exercise this right see PARA 476. As to the calculation of pay while on annual leave see *Williams v British Airways plc* [2008] All ER (D) 409 (Feb), EAT.

3 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 4(2). As to a crew member's remedy in respect of not being allowed to exercise this right see PARA 476.

4 'Employer' means an undertaking established in the United Kingdom by whom a crew member is (or where the employment has ceased, was) employed: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 3. 'Employment' in relation to a crew member, means employment under his contract, and 'employed' is to be construed accordingly: reg 3. As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 For the purposes of the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 10, rest days are (1) not less than seven days in each month during which a crew member works for his employer, which may include any rest periods required under the Air Navigation Order 2005, SI 2005/1970, art 82 (see PARA 464); and (2) not less than 96 days in each calendar year during which a crew member works for his employer, which may include any rest periods required under art 82: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 10(2); Interpretation Act 1978 s 17(2). 'Calendar year' means the period of 12 months beginning with 1 January in any year: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 3.

6 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 10(1). 'Standby', in relation to a crew member, means a crew member who in accordance with the terms of his employment holds himself ready to act as a crew member if called upon to do so by his employer: reg 3. Failure to comply with this requirement is an offence punishable, on summary conviction, with a fine not exceeding the statutory maximum and, on conviction on indictment, with a fine: reg 12(1), (4). As to the statutory maximum see PARA 43 note 12.

7 'Work' is to be construed in accordance with the definition of 'working time', as to which see note 9: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 3.

8 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 7(1). As to health and safety see PARA 470. As to a crew member's remedy in respect of not being allowed to exercise this right see PARA 476.

9 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 7(2)(a). 'Rest break' and 'rest period', in relation to a crew member, mean a period which is not working time: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 3. 'Working time', in relation to a crew member means (1) any period during which he is working at his employer's disposal and carrying out his activity or duties; (2) any period during which he is receiving relevant training; and (3) any additional period which is to be treated as working time for the purpose of the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, under a relevant agreement, and 'work', 'works' and 'to work' are to be construed accordingly: reg 3. 'Relevant training' means the training required to enable a person to perform the duties of flight crew or cabin crew carried out or undertaken whilst employed by an employer: reg 3. 'Relevant agreement', in relation to a crew member, means a workforce agreement which applies to him, any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the crew member and his employer: reg 3. As to workforce agreements see PARA 469. 'Collective agreement' means a collective agreement within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 s 178 the trade union parties to which are independent trade unions within the meaning of s 5: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 3; see **EMPLOYMENT** vol 41 (2009) PARA 1042. Failure to comply with this requirement is an offence punishable, on summary conviction, with a fine not exceeding the statutory maximum and, on conviction on indictment, with a fine: reg 12(1), (4).

10 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 7(2)(b). As to a crew member's remedy in respect of not being allowed to exercise this right see PARA 476.

11 As to the CAA see PARA 50 et seq.

12 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 8(1). Any information which is generated by an employer relating to the working patterns of crew members must be retained by the employer for a period of not less than two years: reg 8(2). Failure to comply with the requirements of reg 8 is an offence punishable, on summary conviction, with a fine not exceeding the statutory maximum and, on conviction on indictment, with a fine: reg 12(1), (4). As to the statutory maximum see PARA 43 note 12.

13 'Block flying time' means the time between an aircraft first moving from its parking place for the purpose of taking off until it comes to rest on its designated parking position with all its engines stopped: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 3.

14 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 9. Failure to comply with this requirement is an offence punishable, on summary conviction, with a fine not exceeding the statutory maximum and, on conviction on indictment, with a fine: reg 12(1), (4).

UPDATE

468 Pattern of work, annual leave and rest days

NOTE 2--*Williams*, cited, reversed sub nom *British Airways plc v Williams*: [2009] EWCA Civ 281, [2009] ICR 906, [2009] All ER (D) 46 (Apr). The Supreme Court has referred to the ECJ certain questions arising in this case: [2010] UKSC 16, [2010] IRLR 504.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iv) Working Time, Health and Safety of Crew/469. Workforce agreements.

469. Workforce agreements.

An agreement is a workforce agreement for the purposes of the Civil Aviation (Working Time) Regulations 2004¹ if the following conditions are satisfied²:

- 355 (1) the agreement is in writing³;
- 356 (2) it has effect for a specified period not exceeding five years⁴;
- 357 (3) it applies either to all of the relevant members of the workforce⁵ or to all of the relevant members of the workforce who belong to a particular group⁶;
- 358 (4) the agreement is signed (a) if it applies to all the relevant members of the workforce, by the representatives of the workforce⁷, and if it applies to relevant members of the workforce in a particular group, by the representatives of the group⁸ to which the agreement applies (excluding, in either case, any representative not a relevant member of the workforce on the date on which the agreement was first made available for signature); or (b) if the employer employed 20 or fewer individuals on the date on which the agreement was first made available for signature, either by the appropriate representatives or by the majority of the individuals employed by him⁹; and
- 359 (5) before the agreement was made available for signature, the employer provided all the employees to whom it was intended to apply on the date on which it came into effect with copies of the text of the agreement and such guidance as those employees might reasonably require in order to understand it in full¹⁰.

1 le the Civil Aviation (Working Time) Regulations 2004, SI 2004/756.

2 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 3, Sch 1 para 1.

3 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 1 para 1(a).

4 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 1 para 1(b).

5 'Relevant members of the workforce' are all of the employees employed by a particular employer, excluding any employee whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 1 para 2. 'Employee' means an individual who has entered into or works under a contract of employment: Sch 1 para 4. As to the meaning of 'employer' see PARA 468 note 4. As to the meaning of 'collective agreement' see PARA 468 note 9.

6 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 1 para 1(c). 'A particular group' is a group of the relevant members of a workforce who undertake a particular function, work at a particular workplace or belong to a particular department or unit within their employer's business: Sch 1 para 2.

7 'Representatives of the workforce' are employees duly elected to represent the relevant members of the workforce: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 1 para 2. Representatives of the workforce or of a particular group are 'duly elected' if the election at which they were elected satisfied the following requirements: Sch 1 para 2. Those requirements are (Sch 1 para 3) that:

39 (1) the number of representatives to be elected is determined by the employer (Sch 1 para 3(a));

40 (2) the candidates for election as representatives of the workforce are relevant members of the workforce, and candidates for election as representatives of the group are members of the group (Sch 1 para 3(b));

- 41 (3) no employee who is eligible to be a candidate is unreasonably excluded from standing for election (Sch 1 para 3(c));
- 42 (4) all the relevant members of the workforce are entitled to vote for representatives of the workforce, and all the members of a particular group are entitled to vote for representatives of the group (Sch 1 para 3(d));
- 43 (5) the employees entitled to vote may vote for as many candidates as there are representatives to be elected (Sch 1 para 3(e)); and
- 44 (6) the election is conducted so as to secure that so far as is reasonably practicable, those voting do so in secret, and the votes given at the election are fairly and accurately counted (Sch 1 para 3(f)).

8 'Representatives of the group' are employees duly elected to represent the members of a particular group: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 1 para 2.

9 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 1 para 1(d).

10 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 1 para 1(e).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iv) Working Time, Health and Safety of Crew/470. Health assessments and health and safety protection at work.

470. Health assessments and health and safety protection at work.

An employer¹ must ensure that each crew member² employed³ by him is entitled to a free⁴ health assessment before he commences his employment and thereafter at regular intervals of whatever duration may be appropriate in the case of the crew member⁵. Such a health assessment may be conducted within the National Health Service⁶.

No person may disclose such a health assessment made in respect of a crew member to any person other than that crew member without that crew member's consent in writing⁷. However, a registered medical practitioner who makes such a health assessment may advise the employer of the crew member in question that the crew member is suffering from health problems which the practitioner considers to be connected with the fact that the crew member works during night time⁸. Where a registered medical practitioner has so advised an employer and it is possible for the employer to transfer the crew member to mobile or non-mobile work for which the crew member is suited and which is to be undertaken during periods such that the crew member will cease to work during night time, then the employer must transfer the crew member accordingly⁹.

An employer must ensure that each crew member employed by him is at all times during the course of that employment provided with adequate health and safety protection and prevention services or facilities¹⁰ appropriate to the nature of his employment¹¹.

1 As to the meaning of 'employer' see PARA 468 note 4.

2 As to the meaning of 'crew member' see PARA 467 note 3.

3 As to the meaning of 'employed' see PARA 468 note 4.

4 Such an assessment is free if it is undertaken at no cost to the crew member to whom it relates: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 5(5)(b).

5 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 5(1). As to a crew member's remedy in respect of not being allowed to exercise this right see PARA 476.

6 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 5(5)(a).

7 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 5(2). Failure to comply with this prohibition is an offence punishable, on summary conviction, with a fine not exceeding the statutory maximum and, on conviction on indictment, with a fine: reg 12(1), (4). As to the statutory maximum see PARA 43 note 12.

8 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 5(3). For these purposes, a crew member works during night time when he works at any time between the hours of 2.00 am and 4.59 am local mean time; and 'local mean time' means the time to which a crew member is acclimatised for the purposes of a scheme: reg 5(6). 'Scheme' means a scheme operated by an employer and approved by the Civil Aviation Authority ('CAA') pursuant to the Air Navigation Order 2005, SI 2005/1970, art 82(1)(b) (see PARA 464): Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 3. As to the meaning of 'work' see PARA 468 note 7. As to the CAA see PARA 50 et seq.

9 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 5(4). As to a crew member's remedy in respect of not being allowed to exercise this right see PARA 476.

10 'Protection and prevention services or facilities' means those services or facilities that are designed to preserve the health and safety of the crew member from any hazards that may threaten his health or safety during the course of his undertaking his work and are capable of being provided by his employer: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 3.

11 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 6. Failure to comply with this requirement is an offence punishable, on summary conviction, with a fine not exceeding the statutory maximum and, on conviction on indictment, with a fine: reg 12(1), (4). As to health and safety at work generally see **HEALTH AND SAFETY AT WORK**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iv) Working Time, Health and Safety of Crew/471. Appointment and powers of inspectors.

471. Appointment and powers of inspectors.

The Civil Aviation Authority ('CAA')¹ may appoint as inspectors (under whatever title it may from time to time determine) such persons having suitable qualifications as it thinks necessary for carrying into effect the Civil Aviation (Working Time) Regulations 2004², and may terminate any such appointment made by it³. Every such appointment of a person as an inspector must be made by an instrument in writing specifying which of the powers conferred on inspectors by the regulations are to be exercisable by the person appointed; and an inspector is in right of his appointment entitled to exercise only such of those powers as are so specified, and is entitled to exercise the powers so specified only within the field of responsibility of the CAA⁴. An inspector must, if so required when exercising or seeking to exercise any power conferred on him, produce his instrument of appointment or a duly authenticated copy of it⁵.

An inspector may for the purpose of carrying into effect the Civil Aviation (Working Time) Regulations 2004 exercise the following powers⁶:

- 360 (1) at any reasonable time (or in a situation which in his opinion may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the above purpose⁷;
- 361 (2) to take with him a constable if he has reasonable cause to apprehend any serious obstruction in the execution of his duty⁸;
- 362 (3) on entering any premises by virtue of head (1) to take with him any other person duly authorised by the CAA; and any equipment or material required for any purpose for which the power of entry is being exercised⁹;
- 363 (4) to make such examination and investigation as may in any circumstances be necessary¹⁰;
- 364 (5) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any such examination or investigation to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers¹¹;
- 365 (6) to require the production of, inspect, and take copies of or of any entry in any records which are required¹² to be kept and any other books, records or documents which it is necessary for him to see for the purposes of any examination or investigation under head (4)¹³;
- 366 (7) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by the above provisions¹⁴;
- 367 (8) any other power which is necessary for the purpose of carrying into effect the Civil Aviation (Working Time) Regulations 2004¹⁵.

It is an offence for a person to contravene any requirement imposed by an inspector under the above provisions¹⁶, or intentionally to obstruct an inspector in the exercise or performance of his powers¹⁷. It is also an offence for a person to make a statement which he knows to be false or recklessly to make a statement which is false where the statement is made in purported compliance with a requirement to furnish any information imposed by or under the regulations¹⁸.

Where an action has been brought against an inspector in respect of an act done in the execution or purported execution of the Civil Aviation (Working Time) Regulations 2004 and the circumstances are such that he is not legally entitled to require the CAA to indemnify him, then the CAA may, nevertheless, indemnify him against the whole or any part of any damages or costs or expenses which he may have been ordered to pay or may have incurred, if the CAA is satisfied that the inspector honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it¹⁹.

- 1 As to the CAA see PARA 50 et seq.
- 2 I.e. the Civil Aviation (Working Time) Regulations 2004, SI 2004/756.
- 3 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 11, Sch 2 para 1(1).
- 4 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 1(2). So much of an inspector's instrument of appointment as specifies the powers which he is entitled to exercise may be varied by the CAA: Sch 2 para 1(3).
- 5 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 1(4).
- 6 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 2(1), (2). Nothing in Sch 2 para 2(2) is to be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for disclosure in an action in the High Court: Sch 2 para 2(4). As to legal professional privilege generally see **CIVIL PROCEDURE** vol 11 (2009) PARAS 558-573; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1479. As to the disclosure of information obtained under the inspector's powers see PARA 472.
- 7 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 2(2)(a).
- 8 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 2(2)(b).
- 9 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 2(2)(c).
- 10 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 2(2)(d).
- 11 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 2(2)(e). No answer given by a person in pursuance of a requirement imposed under Sch 2 para 2(2)(e) is admissible in evidence against that person or the husband or wife of that person in any proceedings: Sch 2 para 2(3). It is an offence for a person to prevent or attempt to prevent any other person from appearing before an inspector or from answering any question to which an inspector may by virtue of Sch 2 para 2(2)(e) require an answer: reg 12(2), (3)(b). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 12(5). As to the standard scale see PARA 50 note 8.
- 12 I.e. by the Civil Aviation (Working Time) Regulations 2004.
- 13 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 2(2)(f).
- 14 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 2(2)(g).
- 15 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 2(2)(h).
- 16 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 12(2), (3)(a). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine: reg 12(7)(a), (b)(ii). As to the statutory maximum see PARA 43 note 12.
- 17 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 12(2), (3)(d). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 12(5).
- 18 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 12(2), (3)(f). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine: reg 12(7)(a), (b)(ii).
- 19 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 7.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iv) Working Time, Health and Safety of Crew/472. Restrictions on disclosure of information.

472. Restrictions on disclosure of information.

Subject to the exceptions noted below, no relevant information¹ may be disclosed without the consent of the person by whom it was furnished². This prohibition does not apply to:

- 368 (1) disclosure of information to the Health and Safety Commission³, the Health and Safety Executive⁴, a government department, or the CAA⁵;
- 369 (2) disclosure by the recipient⁶ of information to any person for the purpose of any function conferred on the recipient by or under any of the relevant statutory provisions⁷ or under the Civil Aviation (Working Time) Regulations 2004⁸;
- 370 (3) disclosure by the recipient of information to a constable authorised by a chief officer of police to receive it⁹; or
- 371 (4) disclosure by the recipient of information in a form calculated to prevent it from being identified as relating to a particular person or case¹⁰.

A person to whom information is disclosed under any of the exceptions above may not use the information for a purpose other than, in a case falling within head (1), a purpose of the Commission, the Executive, a government department, or the CAA in question in connection with the Civil Aviation (Working Time) Regulations 2004 or with the relevant statutory provisions, as the case may be, and in the case of information given to a constable, the purposes of the police in connection with the Civil Aviation (Working Time) Regulations 2004, the relevant statutory provisions or any enactment whatsoever relating to working time¹¹.

A person may not disclose any information obtained by him as a result of the exercise of any power conferred on him by the Civil Aviation (Working Time) Regulations 2004¹² (including in particular any information with respect to any trade secret obtained by him in any premises entered by him by virtue of any such power) except for the purposes of his functions or for the purposes of any legal proceedings or with the relevant consent¹³. However, an inspector must, in circumstances in which it is necessary to do so for the purpose of assisting in keeping persons (or the representatives of persons) adequately informed about matters affecting their health, safety and welfare or working time¹⁴, give to such persons or their representatives factual information obtained by him which relates to their working environment and information with respect to any action which he has taken or proposes to take in or in connection with the performance of his functions in relation to their working environment, and, where an inspector gives such information to persons or their representatives, he must give the like information to the employer of the first-mentioned persons¹⁵. Further, a person who has obtained such information as is referred to above may furnish to a person who appears to him to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, a written statement of the relevant facts observed by him in the course of exercising any of the powers conferred on him¹⁶.

It is an offence for any person to disclose or use any information in contravention of the above provisions¹⁷.

¹ 'Relevant information' means information obtained by an inspector in pursuance of a requirement imposed under the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 2: reg 11, Sch 2 para 8(1). 'Inspector' means a person appointed by the Civil Aviation Authority ('CAA') under Sch 2 para 1: reg 3. See PARA 471. As to the CAA see PARA 50 et seq.

- 2 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 8(2).
- 3 le the Health and Safety Commission referred to in the Health and Safety at Work etc Act 1974 s 10(2): Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 3. See **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 361 et seq.
- 4 le the Health and Safety Executive referred to in the Health and Safety at Work etc Act 1974 s 10(5): Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 3. See **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 361 et seq.
- 5 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 8(3)(a). Any reference to the Commission, the Executive, the CAA or a government department includes respectively a reference to an officer of that body, and also, in the case of a reference to the Commission, includes a reference to a person performing any of the functions of the Commission, or the Executive on its behalf by virtue of the Health and Safety at Work etc Act 1974 s 13(1)(a), an officer of a body which is so performing any such functions and an adviser appointed in pursuance of s 13(1)(d): Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 8(4).
- 6 'Recipient', in relation to any relevant information, means the person by whom that information was so obtained or to whom that information was so furnished, as the case may be: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 8(1).
- 7 'Relevant statutory provisions' means (1) the provisions of the Health and Safety at Work etc Act 1974 and any regulations made under powers contained in that Act; and (2) while and to the extent that they remain in force, the provisions of the Acts mentioned in the Health and Safety at Work etc Act 1974 Sch 1 and which are specified in the third column of that Schedule and the regulations, orders or other instruments of a legislative character made or having effect under a provision so specified: Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 8(1).
- 8 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 8(3)(b).
- 9 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 8(3)(c). As to the office of constable see generally **POLICE** vol 36(1) (2007 Reissue) PARA 101 et seq.
- 10 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 8(3)(d).
- 11 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 8(5).
- 12 le the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 2: see PARA 471.
- 13 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 8(6). For this purpose, 'relevant consent' means, in the case of information furnished in pursuance of a requirement imposed under Sch 2 para 2, the consent of the person who furnished it, and, in any other case, the consent of a person having responsibilities in relation to the premises where the information was obtained: Sch 2 para 8(6).
- 14 As to the meaning of 'working time' see PARA 468 note 9.
- 15 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 8(7).
- 16 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 8(8).
- 17 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 12(2), (3)(e). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both: reg 12(7)(a), (b)(i). As to the statutory maximum see PARA 43 note 12.

UPDATE

472 Restrictions on disclosure of information

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 3--Health and Safety Commission replaced by the Health and Safety Executive: see Legislative Reform (Health and Safety Executive) Order 2008, SI 2008/960; and **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 361 et seq.

NOTE 5--SI 2004/756 Sch 2 para 8(3)(a) amended, Sch 2 para 8(4) substituted: SI 2008/960.

NOTE 11--SI 2004/756 Sch 2 para 8(5) amended: SI 2008/960.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iv) Working Time, Health and Safety of Crew/473. Improvement notices and prohibition notices.

473. Improvement notices and prohibition notices.

If an inspector¹ is of the opinion that a person is contravening one or more of the Civil Aviation (Working Time) Regulations 2004² or has contravened one or more of those regulations in circumstances that make it likely that the contravention will continue or be repeated, he may serve on him a notice (an 'improvement notice') stating that he is of that opinion, specifying the provision or provisions as to which he is of that opinion, giving particulars of the reasons why he is of that opinion, and requiring that person to remedy the contravention or the matter occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought³) as may be specified in the notice⁴.

If as regards any specified activities⁵ an inspector is of the opinion that, as carried on by or under the control of the person in question, the activities involve or will involve a risk of serious personal injury, the inspector may serve on that person a notice (a 'prohibition notice')⁶. A prohibition notice must (1) state that the inspector is of the opinion stated above; (2) specify the matters which in his opinion give or will give rise to the risk; (3) where in his opinion any of those matters involves or will involve a contravention of any of the regulations, state that he is of that opinion, specify the regulation or regulations as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and (4) direct that the activities to which the notice relates may not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice and any associated contraventions of provisions so specified have been remedied⁷.

An improvement notice or a prohibition notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions may be framed to any extent by reference to any approved code of practice and may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter⁸. Where an improvement notice or prohibition notice which is not to take immediate effect has been served, the notice may be withdrawn by an inspector at any time before the end of the period specified in it⁹ and the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending¹⁰.

A person on whom an improvement notice or a prohibition notice is served may within 21 days from the date of its service appeal to an employment tribunal¹¹. On such an appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit¹². Where an appeal is brought against a notice within the period allowed, then (a) in the case of an improvement notice, the bringing of the appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal; (b) in the case of a prohibition notice, the bringing of the appeal has the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction)¹³. One or more assessors may be appointed for the purposes of any proceedings brought before an employment tribunal under these provisions¹⁴.

It is an offence for a person to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice (including any such notice as is modified on appeal)¹⁵.

- 1 As to the meaning of 'inspector' see PARA 472 note 1.
- 2 Ie the Civil Aviation (Working Time) Regulations 2004, SI 2004/756.
- 3 Ie under the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 6: see text to note 11.
- 4 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 11, Sch 2 para 3.
- 5 Ie any activities which are being or are likely to be carried on by or under the control of any person, being activities to or in relation to which any of the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, apply or will, if the activities are so carried on, apply: Sch 2 para 4(1).
- 6 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 4(2).
- 7 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 4(3). A direction contained in a prohibition notice takes effect either at the end of the period specified in the notice or, if the notice so declares, immediately: Sch 2 para 4(4).
- 8 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 5(1), (2).
- 9 Ie in pursuance of the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 3 or 4(4).
- 10 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 5(3).
- 11 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 6(1), (2). As to employment tribunals see **EMPLOYMENT** vol 41 (2009) PARA 1363 et seq.
- 12 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 6(2).
- 13 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 6(3).
- 14 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, Sch 2 para 6(4).
- 15 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 12(2), (3)(c). A person guilty of such an offence is liable, on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum; and, on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine or both: reg 12(6). As to the statutory maximum see PARA 43 note 12.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iv) Working Time, Health and Safety of Crew/474. Offences.

474. Offences.

In relation to offences of failing to comply with any of the relevant requirements¹ of the Civil Aviation (Working Time) Regulations 2004² and offences³ committed where an inspector⁴ is exercising or has exercised any power conferred by those regulations⁵, the following provisions apply⁶. Where the commission by any person of an offence is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person⁷. Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly⁸.

Proceedings for an offence may not be instituted in England or Wales except by an inspector or by, or with the consent of, the Director of Public Prosecutions⁹. If authorised in that behalf by the Civil Aviation Authority ('CAA')¹⁰, an inspector may prosecute proceedings for an offence before a magistrates' court even though the inspector is not of counsel or a solicitor¹¹.

1 'Relevant requirements' means the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, regs 5(2), 6, 7(2)(a), 8, 9 and 10: reg 3.

2 See the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 12(1); and PARAS 468 notes 6, 9, 12, 14, 470 notes 7, 11.

3 See the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 12(3); and PARAS 471, 473.

4 As to the meaning of 'inspector' see PARA 472 note 1.

5 Imposed by the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 11, Sch 2: see PARA 471.

6 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 12(8).

7 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 13.

8 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 14(1). Where the affairs of a body corporate are managed by its members, this applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: reg 14(2).

9 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 15. As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

10 As to the CAA see PARA 50 et seq.

11 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 16(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iv) Working Time, Health and Safety of Crew/475. Power of court to order cause of offence to be remedied.

475. Power of court to order cause of offence to be remedied.

Where a person is convicted of an offence¹ in respect of any matter which appears to the court to be a matter which it is in his power to remedy, in addition to or instead of imposing any punishment, the court may order the person in question to take such steps as may be specified in the order for remedying the matters within such time as may be fixed by the order². Where a person is ordered to remedy any matter, that person is not liable in respect of that matter in so far as it continues during the time fixed by the order or any further time allowed³.

1 As to offences see PARA 474.

2 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 17(2), (2). The time fixed by an order under reg 17(2) may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under reg 17(3), as the case may be: reg 17(3).

3 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 17(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/6. OPERATORS AND CREW/(2) AIRCRAFT CREW/(iv) Working Time, Health and Safety of Crew/476. Remedies of crew members.

476. Remedies of crew members.

A crew member¹ may present a complaint to an employment tribunal that his employer² has refused to permit him to exercise any right he has to annual leave³, free health assessment⁴, transfer from night work⁵ or in relation to patterns of work⁶. An employment tribunal may not consider a complaint unless it is presented:

- 372 (1) before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period⁷ or annual leave extending over more than one day, the date on which it should have been permitted to begin), or the payment in lieu of annual leave⁸ should have been made; or
- 373 (2) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months⁹.

Where an employment tribunal finds a complaint¹⁰ well founded, the tribunal must make a declaration to that effect; and may make an award of compensation to be paid by the employer to the crew member¹¹. The amount of the compensation is to be such as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in refusing to permit the crew member to exercise his right and any loss sustained by the crew member which is attributable to the matters complained of¹².

1 As to the meaning of 'crew member' see PARA 467 note 3.

2 As to the meaning of 'employer' see PARA 468 note 4.

3 Ie under the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 4: see PARA 468 text to notes 1-3.

4 Ie under the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 5(1): see PARA 470 text to notes 1-5.

5 Ie under the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 5(4): see PARA 470 text to note 9.

6 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 18(1). Ie the rights under reg 7(1), (2)(b): see PARA 468 text and notes 8, 10.

7 As to the meaning of 'rest period' see PARA 468 note 9.

8 Ie under the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 4(2)(b).

9 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 18(2).

10 Ie a complaint under the Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 4, 5(1), (4), 7(1) or 7(2)(b).

11 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 18(3).

12 Civil Aviation (Working Time) Regulations 2004, SI 2004/756, reg 18(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(i) Preservation of Documents/477. Preservation and delivery of documents and records.

7. OPERATION OF AIRCRAFT

(1) DOCUMENTS AND RECORDS

(i) Preservation of Documents

477. Preservation and delivery of documents and records.

The operator¹ of an aircraft is required by the Air Navigation Order 2005² to preserve specified documents and records; if he ceases to be the operator of a particular aircraft he must continue to preserve the specified documents and records relating to it as if he had not ceased to be the operator, and in the event of his death the duty falls upon his personal representative³.

The original operator or his personal representative must deliver to the new operator of an aircraft which remains registered in the United Kingdom⁴ on demand the certificates of maintenance review and release to service⁵, log books⁶, weight schedule⁷ and any record made by a flight data recorder⁸ which are in force or are required to be preserved in respect of that aircraft⁹. Similarly, the operator or his personal representative must deliver to the new operator on demand the log book relating to an engine or variable pitch propeller removed from an aircraft and installed in another aircraft¹⁰ and the records of flight times concerning a person who becomes a member of the flight crew¹¹ of a public transport aircraft¹² registered in the United Kingdom and operated by another person¹³. The person to whom these documents are delivered must deal with them as if he were the original operator¹⁴.

1 As to the meaning of 'operator' see PARA 437.

2 Ie the Air Navigation Order 2005, SI 2005/1970. See further PARAS 478-482.

3 Air Navigation Order 2005, SI 2005/1970, art 91(1).

4 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

5 As to certificates of maintenance review and release to service see PARAS 406-409, 428; and as to their preservation see PARA 479.

6 As to log books see PARAS 408, 413, 453; and as to their preservation see PARA 478.

7 As to weight schedules see PARA 414; and as to their preservation see PARA 479.

8 As to flight data recorders and their preservation see PARA 482.

9 Air Navigation Order 2005, SI 2005/1970, art 91(2).

10 Air Navigation Order 2005, SI 2005/1970, art 91(3). See PARA 413.

11 As to the meaning of 'flight crew' see PARA 456.

12 As to the meaning of 'public transport aircraft' see PARA 363.

13 Air Navigation Order 2005, SI 2005/1970, art 91(4). See PARA 464.

14 See the Air Navigation Order 2005, SI 2005/1970, art 91(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(i) Preservation of Documents/478. Preservation of log books and approved records.

478. Preservation of log books and approved records.

Log books or approved records¹ must be preserved for a specified period: thus a technical log or approved record² must be preserved by the operator³ for a period of at least two years after the date on which the aircraft has been destroyed or permanently withdrawn from use or for such shorter period as the Civil Aviation Authority ('CAA')⁴ may permit in a particular case⁵; aircraft, engine and variable pitch propeller log books⁶ must be preserved by the operator until a date two years after the date of destruction or permanent withdrawal from use of the aircraft, engine or propeller, as the case may be⁷; and any personal flying log book⁸, required to be kept by every member of the flight crew⁹ of an aircraft registered in the United Kingdom¹⁰ and by every person flying for the purpose of qualifying for the grant or renewal of a licence, must be preserved so that it can be produced to an authorised person¹¹ within a period of two years after the date of the last entry¹².

1 As to the meaning of 'approved record' see PARA 408 note 1.

2 See PARA 408.

3 As to the meaning of 'operator' see PARA 437.

4 As to the CAA see PARA 50 et seq.

5 Air Navigation Order 2005, SI 2005/1970, art 15(9), which is expressed to be subject to art 91 (see PARA 477). A person acting in contravention of art 15(9) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

6 See PARA 413.

7 Air Navigation Order 2005, SI 2005/1970, art 22(6), which is expressed to be subject to art 91 (see PARA 477). A person acting in contravention of art 22(6) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A.

8 See the Air Navigation Order 2005, SI 2005/1970, art 35; and PARA 453.

9 As to the meaning of 'flight crew' see PARA 456.

10 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

11 As to the meaning of 'authorised person' see PARA 254 note 3.

12 Air Navigation Order 2005, SI 2005/1970, art 88(4). A person acting in contravention of art 88(4) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 148(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(i) Preservation of Documents/479. Preservation of certificates and weight schedules.

479. Preservation of certificates and weight schedules.

Subject to the general provisions as to the preservation of records¹, the operator² of an aircraft must preserve all certificates of maintenance review³ for a period of two years after the date of issue⁴; all certificates of release to service⁵ must be inserted in the technical log or approved record⁶ and thus kept for the period for which the operator is required to preserve the log books or approved records⁷ relating to the same part of the aircraft or to the same equipment or apparatus⁸; and the weight schedule⁹ must be kept until the expiration of a period of six months following the next occasion on which the aircraft is weighed¹⁰.

1 In the Air Navigation Order 2005, SI 2005/1970, art 91: see PARA 477.

2 As to the meaning of 'operator' see PARA 437.

3 As to certificates of maintenance review see PARAS 406-409.

4 Air Navigation Order 2005, SI 2005/1970, art 14(8). A person acting in contravention of art 14(8) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 8.

5 As to certificates of release to service see PARA 428.

6 See the Air Navigation Order 2005, SI 2005/1970, art 15(6). As to the technical log see PARA 408. As to the meaning of 'approved record' see PARA 408 note 1.

7 See PARA 478.

8 See the Air Navigation Order 2005, SI 2005/1970, art 15(9). A person acting in contravention of art 15 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A.

9 As to weight schedules see PARA 414.

10 Air Navigation Order 2005, SI 2005/1970, art 23(3). A person acting in contravention of art 23(3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(i) Preservation of Documents/480. Preservation of load sheets.

480. Preservation of load sheets.

A copy of the load sheet¹ and of the instructions given by the operator² must be preserved by him until the expiration of a period of six months after the completion of the flights to which they relate³.

1 As to the load sheet see PARA 503.

2 As to the instructions given by the operator see PARA 502. As to the meaning of 'operator' see PARA 437.

3 Air Navigation Order 2005, SI 2005/1970, art 43(8). A person acting in contravention of art 43(8) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(i) Preservation of Documents/481. Preservation of records of flight times and duty and rest periods.

481. Preservation of records of flight times and duty and rest periods.

The operator¹ of an aircraft must preserve all records of flight times² of each member of the aircraft's flight crew³ for a period of 12 months after the end of the flight to which they relate⁴.

1 As to the meaning of 'operator' see PARA 437.

2 See PARAS 463-466.

3 As to the meaning of 'flight crew' see PARA 456.

4 Air Navigation Order 2005, SI 2005/1970, art 82(4), which is expressed to be subject to art 91 (see PARA 477). A person acting in contravention of art 82(4) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(i) Preservation of Documents/482. Flight data recorders and cockpit voice recorders.

482. Flight data recorders and cockpit voice recorders.

Where a flight data recorder, or a cockpit voice recorder, or a combined voice recorder/flight data recorder is required to be carried in an aircraft¹, it must be in use from the beginning of the take-off run until the end of the landing run² or, in the case of a helicopter³, from the time that the rotors first turn for the purpose of taking off until the rotors are next stopped⁴.

The operator⁵ must preserve the record made by the flight data recorder⁶, together with the means of identifying the record with the flight to which it relates, for such period as the Civil Aviation Authority ('CAA')⁷ may in a particular case direct⁸.

1 le by virtue of the Air Navigation Order 2005, SI 2005/1970, art 19(2), Sch 4 para 5(4), (5), (6) or (7): see PARA 410.

2 Air Navigation Order 2005, SI 2005/1970, art 62(1). A person acting in contravention of art 62 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. For the power to direct that an aircraft is not permitted to fly if these provisions cannot be complied with see art 144(1); and PARA 528.

3 le as required by the Air Navigation Order 2005, SI 2005/1970, Sch 4 para 5(16).

4 Air Navigation Order 2005, SI 2005/1970, art 62(3). For the penalty for contravention of this provision see note 2.

5 As to the meaning of 'operator' see PARA 437.

6 The operator of an aeroplane must preserve the last 25 hours of recording made by a recorder required in the aeroplane, and at least one representative flight, ie a flight made within the last 12 months including take-off, climb, cruise, descent, approach to landing and landing: Air Navigation Order 2005, SI 2005/1970, art 62(2). There are additional requirements as to the preservation of records made by flight data recorders or cockpit voice recorders carried on helicopters: see art 62(4), (5). For the penalty for contravention of these provisions see note 2.

7 As to the CAA see PARA 50 et seq.

8 Air Navigation Order 2005, SI 2005/1970, art 62(2), (4), which is expressed to be subject to art 91 (see PARA 477). For the penalty for contravention of this provision see note 1. Failure to comply with a direction is an offence: see arts 147, 148, Sch 14.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(ii) Carriage of Documents/483. Prohibition of flight without appropriate documents.

(ii) Carriage of Documents

483. Prohibition of flight without appropriate documents.

An aircraft must not fly unless it carries the documents which it is required to carry under the law of the country in which it is registered¹.

¹ Air Navigation Order 2005, SI 2005/1970, art 86(1). A person acting in contravention of art 86(1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 8. For the documents which must be carried by an aircraft registered in the United Kingdom see PARA 484. As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(ii) Carriage of Documents/484. Documents to be carried by aircraft registered in the United Kingdom.

484. Documents to be carried by aircraft registered in the United Kingdom.

Aircraft registered in the United Kingdom¹ must, when in flight², whether within the United Kingdom or elsewhere, carry any noise certificate³ which is required to be in force in respect of that aircraft⁴ and no aircraft may land or take off in the United Kingdom unless it carries every noise certificate which it is required to carry under the law of the country of registration⁵.

An aircraft registered in the United Kingdom must, when it is in flight, carry specified documents when it is on a flight for the purposes of (1) public transport⁶; (2) aerial work⁷; or (3) private flight being international air navigation⁸. In each of these cases the aircraft must carry the aircraft radio station licence⁹, the certificate of airworthiness¹⁰ and the licences of the members of the flight crew¹¹. Where the flight is international air navigation it must also carry the certificate of registration¹² and a copy of the procedure to be observed if an aircraft is intercepted¹³. In the case of a flight for the purposes of public transport or aerial work, the aircraft must also carry one copy of any certificate of maintenance review in force in respect of the aircraft¹⁴, and the technical log¹⁵. On a flight for the purposes of public transport, the aircraft must carry those parts of the operations manual relevant to the duties of the crew on the flight¹⁶; and it must also carry one copy of the load sheet, if any, required in respect of the flight¹⁷. When an aircraft is flying in accordance with the terms of a permission granted to the operator allowing the aircraft to fly in special circumstances with minimum equipment¹⁸, it must carry the permission unless otherwise authorised¹⁹.

However, where a flight is intended to begin and end at the same aerodrome and does not include passage over the territory of any country other than the United Kingdom, all of the above documents, including the noise certificate, may be kept at that aerodrome instead of being carried on the aircraft²⁰.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

2 As to the meaning of 'in flight' see PARA 530.

3 As to noise certificates see PARA 396 et seq.

4 See the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 18(2); the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 14(2); and PARA 403.

5 See the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 14(1); and PARA 403.

6 As to public transport see PARA 363.

7 As to the meaning of 'aerial work' see PARA 364.

8 Air Navigation Order 2005, SI 2005/1970, art 86(2), Sch 10 para 1. 'International air navigation' means any flight which includes passage over the territory of any country other than the United Kingdom, except any of the Channel Islands, the Isle of Man, or any other relevant overseas territory to which there is power to extend the Civil Aviation Act 1982 under s 108(1) (see PARA 30): Air Navigation Order 2005, SI 2005/1970, Sch 10 para 3. As to British protected states see **COMMONWEALTH** vol 13 (2009) PARA 708. A person acting in contravention of art 86 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 8.

9 le Document A: Air Navigation Order 2005, SI 2005/1970, Sch 10 para 2(1).

10 le Document B, in the case of a non-EASA aircraft the national certificate of airworthiness in force in respect of the aircraft: Air Navigation Order 2005, SI 2005/1970, Sch 10 para 2(2) (amended by SI 2007/274). As to certificates of airworthiness see PARAS 376-384. As to the meaning of 'non-EASA aircraft' see PARA 375 note 4.

11 le Document C: Air Navigation Order 2005, SI 2005/1970, Sch 10 para 2(3). As to flight crew licensing see PARAS 438-454. As to the meaning of 'flight crew' see PARA 456.

12 le Document G: Air Navigation Order 2005, SI 2005/1970, Sch 10 para 2(7). As to certificates of registration see PARA 370.

13 le Document I: Air Navigation Order 2005, SI 2005/1970, Sch 10 para 2(9).

14 le Document E: Air Navigation Order 2005, SI 2005/1970, Sch 10 para 2(5). As to certificates of maintenance review see PARAS 406-409.

15 le Document F: Air Navigation Order 2005, SI 2005/1970, Sch 10 para 2(6). As to technical logs see PARA 408.

16 le Document H: Air Navigation Order 2005, SI 2005/1970, Sch 10 para 2(8). The text refers to those parts of the operations manual required by art 38(2)(c) to be carried on the flight: see PARA 509. As to operations manuals see PARAS 509-510.

17 le Document D: Air Navigation Order 2005, SI 2005/1970, Sch 10 para 2(4). As to load sheets see PARA 503.

18 le under the Air Navigation Order 2005, SI 2005/1970, art 21: see PARA 410.

19 le Document J: Air Navigation Order 2005, SI 2005/1970, Sch 10 para 2(10). With the permission of the Civil Aviation Authority ('CAA'), an aircraft to which art 38 applies (see PARA 509) need not carry such a permission if it carries an operations manual which includes the particulars specified in Sch 9 Pt A para 1(q) (see PARA 510): Sch 10 para 2(10). As to the CAA see PARA 50 et seq.

20 Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 14(2)(b); Air Navigation Order 2005, SI 2005/1970, art 86(3).

UPDATE

484 Documents to be carried by aircraft registered in the United Kingdom

NOTE 4--SI 2002/798 art 14(2) now Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, art 20(2), (3).

NOTE 5--SI 2002/798 art 14(1) now SI 2008/3133 art 20(1).

NOTE 20--SI 2002/798 art 14(2)(b) now SI 2008/3133 art 20(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(ii) Carriage of Documents/485. Records concerning exposure to cosmic radiation.

485. Records concerning exposure to cosmic radiation.

A relevant undertaking¹ must keep a record for a prescribed period and in a prescribed manner of any assessment of the exposure of air crew to cosmic radiation² and the names of air crew concerned³.

1 'Relevant undertaking' means an undertaking established in the United Kingdom which operates aircraft; and 'undertaking' includes a natural or legal person: Air Navigation Order 2005, SI 2005/1970, art 85(5)(b).

2 A relevant undertaking has a duty to protect the air crew from cosmic radiation: see the Air Navigation Order 2005, SI 2005/1970, art 85. A person acting in contravention of arts 85, 87 (see the text and note 3) is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.

3 See the Air Navigation Order 2005, SI 2005/1970, art 87(1). For the penalty for contravention of this provision see note 2. As to the manner in which the record must be kept see the Air Navigation (Cosmic Radiation) (Keeping of Records) Regulations 2000, SI 2000/1380. The prescribed period for which the record must be kept is generally two years from the date of the assessment, but in certain circumstances it is longer: see reg 2(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(iii) Production of Documents and Records/486. Production of documents by commander.

(iii) Production of Documents and Records

486. Production of documents by commander.

The commander¹ of an aircraft must, within a reasonable time after being requested to do so by an authorised person², produce to that person the following documents³:

- 374 (1) the certificates of registration⁴ and airworthiness⁵ in force in respect of the aircraft⁶;
- 375 (2) the licences of the flight crew⁷; and
- 376 (3) such other documents as the aircraft is required to carry⁸ when in flight⁹.

An authorised person may inspect and copy any documents which he is empowered to require to be produced to him¹⁰. Intentionally obstructing or impeding a person acting in the exercise of these powers is an offence¹¹.

1 As to the meaning of 'commander' see PARA 456.

2 As to the meaning of 'authorised person' see PARA 254 note 3.

3 Air Navigation Order 2005, SI 2005/1970, art 88(1). A person acting in contravention of this provision is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 8.

4 As to certificates of registration see PARA 370.

5 As to certificates of airworthiness see PARAS 376-384.

6 Air Navigation Order 2005, SI 2005/1970, art 88(1)(a).

7 Air Navigation Order 2005, SI 2005/1970, art 88(1)(b). As to the licences of the flight crew see PARA 438 et seq. As to the meaning of 'flight crew' see PARA 456.

8 As required by the Air Navigation Order 2005, SI 2005/1970, art 86: see PARAS 483-484.

9 Air Navigation Order 2005, SI 2005/1970, art 88(1)(c).

10 Air Navigation Order 2005, SI 2005/1970, art 90.

11 Air Navigation Order 2005, SI 2005/1970, art 146. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(iii) Production of Documents and Records/487. Production of documents by operator.

487. Production of documents by operator.

The operator¹ of an aircraft registered in the United Kingdom² must, within a reasonable time after being requested to do so by an authorised person³, cause to be produced to that person such of the following documents or records⁴ as that person may have requested⁵:

- 377 (1) the aircraft radio station licence⁶, the certificate of airworthiness⁷ and the certificate of registration⁸;
- 378 (2) the aircraft, engine and variable pitch propeller log books⁹;
- 379 (3) any weight schedule required to be preserved¹⁰;
- 380 (4) any records of flight times, duty periods and rest periods¹¹;
- 381 (5) the operations manual¹²;
- 382 (6) the record made by any flight data recorder¹³; and
- 383 (7) in the case of public transport aircraft¹⁴ or aerial work aircraft¹⁵, the following additional documents: (a) a copy of the load sheet¹⁶; (b) a copy of each certificate of maintenance review¹⁷; (c) the technical log; and (d) the parts of the operations manual relevant to the duties of each member of the crew of the aircraft on the flight and required to be carried on each flight¹⁸.

A relevant undertaking¹⁹ must, within a reasonable time of being requested to do so by an authorised person, cause to be produced to that person a record of any assessment of the exposure of air crew to cosmic radiation²⁰.

An authorised person may inspect and copy any documents which he is empowered to require to be produced to him²¹. Intentionally obstructing or impeding a person acting in the exercise of these powers is an offence²².

The Secretary of State²³ may give a direction to any person who is an operator of an aircraft which is being flown for the carriage of passengers from the United Kingdom (directly or via another country) to a country outside the European Economic Area and specified in the direction, to make data relating to all passengers and crew on the aircraft or expected to be on the aircraft available electronically to authorities in that country²⁴.

1 As to the meaning of 'operator' see PARA 437.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to the meaning of 'authorised person' see PARA 254 note 3.

4 I.e. documents or records required by the Air Navigation Order 2005, SI 2005/1970, to be in force, carried, produced or made available.

5 Air Navigation Order 2005, SI 2005/1970, art 88(2). A person acting in contravention of art 88 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 8.

6 As to radio communications see PARAS 521-523.

7 As to certificates of airworthiness see PARAS 376-384.

- 8 Air Navigation Order 2005, SI 2005/1970, art 88(2)(a), Sch 10 para 2(1), (2), (7). As to certificates of registration see PARA 370.
- 9 Air Navigation Order 2005, SI 2005/1970, art 88(2)(b). As to log books see PARA 413.
- 10 Air Navigation Order 2005, SI 2005/1970, art 88(2)(c). Is any weight schedule required to be preserved under art 23(3): see PARA 414.
- 11 Air Navigation Order 2005, SI 2005/1970, art 88(2)(e). Is any such records as are required to be preserved by art 82(4) (see PARA 464), and such other documents and information in the possession or control of the operator, as the authorised person may require for the purpose of determining whether those records are complete and accurate: art 82(2)(e).
- 12 Air Navigation Order 2005, SI 2005/1970, art 88(2)(f). As to the operations manual see PARAS 509-510.
- 13 Air Navigation Order 2005, SI 2005/1970, art 88(2)(g). As to the flight data recorder see PARA 482.
- 14 As to the meaning of 'public transport aircraft' see PARA 363.
- 15 As to the meaning of 'aerial work aircraft' see PARA 364.
- 16 As to the load sheet see PARA 503.
- 17 As to certificates of maintenance review see PARAS 406-409.
- 18 Air Navigation Order 2005, SI 2005/1970, art 88(2)(d), Sch 10 para 2(4)-(6), (8). As to the technical log see PARA 408.
- 19 As to the meaning of 'relevant undertaking' see PARA 485 note 1.
- 20 Air Navigation Order 2005, SI 2005/1970, art 87(2). See further PARA 485.
- 21 Air Navigation Order 2005, SI 2005/1970, art 90.
- 22 Air Navigation Order 2005, SI 2005/1970, art 146. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A.
- 23 As to the Secretary of State see PARA 33.
- 24 See the Air Navigation Order 2005, SI 2005/1970, art 141A(1)-(3), (5) (art 141A added by SI 2006/2316). A direction may be given in respect of all aircraft, any aircraft, or any class of aircraft, of which (at the time when the direction is given or at any subsequent time) the person is the operator and which is or are specified in the direction: Air Navigation Order 2005, SI 2005/1970, art 141A(4) (as so added). A direction only has effect in relation to data which are collected and contained in the operator's automated reservation system or departure control system: art 141A(6) (as so added). 'Automated reservation system' means, in relation to an operator of an aircraft, the central reservation system of the operator which holds data relating to a flight booked by or on behalf of a passenger; and 'departure control system' means, in relation to an operator of an aircraft, the system used by the operator to check passengers onto a flight: art 155(1) (definitions added by SI 2006/2316). Failure to comply with a direction is an offence: see the Air Navigation Order 2005, SI 2005/1970, arts 147, 148, Sch 14.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(iii) Production of Documents and Records/488. Production of licences.

488. Production of licences.

The holder of a licence granted or rendered valid under the Air Navigation Order 2005¹ must within a reasonable time after being requested to do so by an authorised person² cause the licence, including any certificate of validation³, to be produced to that person⁴.

The same applies to a medical certificate issued to a person⁵ to the effect that he is fit to act as pilot in command of an aircraft for the purpose of becoming qualified for the grant or renewal of a pilot's licence or the variation of a rating in it⁶.

An authorised person may inspect and copy any licence which he is empowered to require to be produced to him⁷. Impeding a person acting in the exercise of these powers is an offence⁸.

1 Ie the Air Navigation Order 2005, SI 2005/1970.

2 As to the meaning of 'authorised person' see PARA 254 note 3.

3 As to certificates of validation see PARA 382.

4 Air Navigation Order 2005, SI 2005/1970, art 88(3). A person acting in contravention of art 88 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 7.

5 Ie under the Air Navigation Order 2005, SI 2005/1970, art 26(2)(b)(ii): see PARA 439.

6 Air Navigation Order 2005, SI 2005/1970, art 88(3).

7 Air Navigation Order 2005, SI 2005/1970, art 90.

8 Air Navigation Order 2005, SI 2005/1970, art 146. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(iii) Production of Documents and Records/489. Production of log books.

489. Production of log books.

Every person required to keep a personal flying log book¹ must cause it to be produced within a reasonable time to an authorised person² after being requested to do so by him within two years after the date of the last entry in it³. An authorised person may inspect and copy any logbook which he is empowered to require to be produced to him⁴. Intentionally obstructing or impeding a person acting in the exercise of these powers is an offence⁵.

1 le under the Air Navigation Order 2005, SI 2005/1970, art 35: see PARA 453.

2 As to the meaning of 'authorised person' see PARA 254 note 3.

3 Air Navigation Order 2005, SI 2005/1970, art 88(4). A person acting in contravention of art 88 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 8.

4 Air Navigation Order 2005, SI 2005/1970, art 90.

5 Air Navigation Order 2005, SI 2005/1970, art 146. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(iv) General Provisions as to Documents/490. The Civil Aviation Authority's powers as to revocation, suspension or variation of certificates.

(iv) General Provisions as to Documents

490. The Civil Aviation Authority's powers as to revocation, suspension or variation of certificates.

The Civil Aviation Authority ('CAA')¹ may, if it thinks fit, provisionally suspend or vary any certificate, licence, approval, permission, exemption, authorisation or other document issued, granted or having effect under the Air Navigation Order 2005² and, where satisfied after due inquiry that there are sufficient grounds, may make a definitive revocation, suspension or variation³. There is a limited right of appeal⁴.

Where any such document has been revoked, suspended or varied, the holder or any person having possession or custody of it must surrender it to the CAA within a reasonable time after being required to do so⁵.

1 As to the CAA see PARA 50 et seq. The Air Navigation Order 2005, SI 2005/1970, art 93 (see PARA 491) applies to the revocation, suspension and variation of a permission granted under arts 138, 140 (see PARAS 363 text and notes 10-13, 542): art 92(5).

2 Ie the Air Navigation Order 2005, SI 2005/1970.

3 See the Air Navigation Order 2005, SI 2005/1970, art 92(1), (2). A flight manual, performance schedule or other document incorporated by reference in a certificate of airworthiness (see PARA 380) may be varied whether or not after due inquiry: art 92(6).

4 As to review by the CAA see the Civil Aviation Authority Regulations 1991, SI 1991/1672, reg 6 (amended by SI 2001/2448). This must be read in the context of the Civil Aviation Act 1982 s 7(1): see PARAS 51, 96. As to appeals to the Secretary of State see PARA 121. As to the Secretary of State see PARA 33.

5 Air Navigation Order 2005, SI 2005/1970, art 92(3). A person acting in contravention of art 92 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 7.

UPDATE

490 The Civil Aviation Authority's powers as to revocation, suspension or variation of certificates

NOTE 4--SI 1991/1672 reg 6 further amended: SI 2008/2683.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(iv) General Provisions as to Documents/491. Secretary of State's powers as to revocation, suspension or variation of permissions.

491. Secretary of State's powers as to revocation, suspension or variation of permissions.

Where the Secretary of State¹ has granted a permission to an operator, charterer or foreign government to allow an aircraft registered outside the United Kingdom² to take on board or discharge any passengers or cargo in the United Kingdom for valuable consideration³, he may revoke, suspend or vary that permission after having notified the permit-holder⁴ of his intention and after due consideration of the case⁵. The same applies to a permission given to the operator or charterer of an aircraft registered outside the United Kingdom to allow the aircraft to fly over the United Kingdom for the purpose of aerial photography, aerial survey or other aerial work⁶.

However, the urgency of the matter may compel the Secretary of State provisionally to suspend or vary the permit without complying with the statutory requirements⁷. If he does so, he must comply with the requirements as soon as reasonably practicable and then, after due consideration of the case, must either revoke the provisional suspension or variation or make a definitive revocation, suspension or variation⁸.

The power to revoke, suspend or vary such a permission may be exercised by the Secretary of State whenever in his judgment, and whether or not by reason of anything done or omitted to be done by the permit-holder or otherwise connected with the permit-holder, it is necessary or expedient that the holder should not enjoy, or no longer enjoy, the rights conferred on him by the permit, or should enjoy them subject to such limitations or qualifications as the Secretary of State may determine⁹. The Secretary of State may exercise this power if it appears to him that:

- 384 (1) the permit holder has committed a breach of a condition attached to which the permit is subject¹⁰;
- 385 (2) the bilateral agreement with the foreign government is no longer in force or has been breached by the other government¹¹;
- 386 (3) there have been inconsistent or prejudicial actions by the holder, government or aeronautical authorities of the other country in respect of such an agreement¹²;
- or
- 387 (4) the holder is no longer designated by his government for the purposes of the permit or he has so conducted himself, or new circumstances have arisen concerning the holder, as to make it necessary or expedient to disregard or qualify the consequences of his being so designated¹³.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 I.e. under the Air Navigation Order 2005, SI 2005/1970, art 138 (see PARA 363): art 93(8). As to the meaning of 'valuable consideration' see PARA 363 note 3.

4 References to the 'permit-holder' are references to the person to whom any permit to which the Air Navigation Order 2005, SI 2005/1970, art 93 applies has been granted or is deemed to have been granted: art 93(9).

5 Air Navigation Order 2005, SI 2005/1970, art 93(1), (2). The permit holder or any other person having possession or custody of a permit which is revoked, suspended or varied must surrender it to the Secretary of

State within a reasonable time of being required to do so: art 93(6). A person acting in contravention of art 93 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 8.

The absence of 'due inquiry' on the part of the Secretary of State vitiates his decision: see *R v Secretary of State for Transport, ex p Philippine Airlines Inc* (1984) 1 S & B Av R IV/31, (1984) Times, 17 October, CA (where it was held that the Secretary of State must construe the bilateral agreement before revoking the permit).

6 See the Air Navigation Order 2005, SI 2005/1970, art 93(1), (2). Such permission is granted under art 140 (see PARA 542): art 93(8).

7 Air Navigation Order 2005, SI 2005/1970, art 93(3). As to whether the Secretary of State is entitled to suspend a permit provisionally pending inquiry see *R v Secretary of State for Transport, ex p Pegasus Holidays (London) Ltd* [1989] 2 All ER 481, [1988] 1 WLR 990, 1 S & B Av R II/1.

8 Air Navigation Order 2005, SI 2005/1970, art 93(3)(a), (b).

9 Air Navigation Order 2005, SI 2005/1970, art 93(4).

10 Air Navigation Order 2005, SI 2005/1970, art 93(5)(a). The breach of any condition renders the permit invalid while the breach continues: art 93(6). There is no limitation to the power of the Secretary of State to attach conditions to the permit: see eg *Pan American World Airways Inc v Department of Trade* [1976] 1 Lloyd's Rep 257, CA; *Seaboard World Airlines Inc v Department of Trade* [1976] 1 Lloyd's Rep 42.

Where conditions require that a chartered aircraft is to be operated by crews of the country of registration and that the charterer is to ensure that the foreign licence requirements are complied with, the Secretary of State may suspend provisionally the permit where the pilot's ability gives serious grounds for concern: see *R v Secretary of State for Transport, ex p Pegasus Holidays (London) Ltd* [1989] 2 All ER 481, [1988] 1 WLR 990, 1 S & B Av R II/1.

11 Air Navigation Order 2005, SI 2005/1970, art 93(5)(b).

12 Air Navigation Order 2005, SI 2005/1970, art 93(5)(c).

13 Air Navigation Order 2005, SI 2005/1970, art 93(5)(d).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(iv) General Provisions as to Documents/492. Breach of condition of certificate or other document.

492. Breach of condition of certificate or other document.

The breach of any condition subject to which any certificate, licence, approval, permission, exemption or other document has been granted or issued, or which has effect under the Air Navigation Order 2005¹, renders the document invalid during the continuance of the breach in the absence of provision to the contrary in the document².

¹ I.e. the Air Navigation Order 2005, SI 2005/1970.

² Air Navigation Order 2005, SI 2005/1970, art 92(4). This provision does not apply to a licence issued in respect of an aerodrome (see PARAS 226-227): art 92(4). As to the meaning of 'aerodrome' see PARA 175.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(1) DOCUMENTS AND RECORDS/(iv) General Provisions as to Documents/493. Offences relating to documents and records.

493. Offences relating to documents and records.

A person must not, with intent to deceive:

- 388 (1) use any document¹ issued or required by or under the Air Navigation Order 2005² or by or under Part 21, 66, 145, 147 or M³ which has been forged, altered, revoked or suspended, or to which he is not entitled⁴;
- 389 (2) lend any document issued or having effect or required by or under the Air Navigation Order 2005 or by or under Part 21, 66, 145, 147 or M to, or allow it to be used by, any other person⁵; and
- 390 (3) make any false representation for the purpose of procuring for himself or any other person the grant, issue, renewal or variation of any such document⁶.

A person must not intentionally damage, alter or render illegible any log book or other record required by or under the Air Navigation Order 2005 or by or under Part 21, 66, 145, 147 or M to be maintained, or any entry made in it; he must not knowingly make, or procure or assist in the making of, any false entry in it or material omission from it; and he must not destroy it during the period for which it is required under the Air Navigation Order 2005 to be preserved⁷.

A person must not knowingly make in a load sheet any entry which is incorrect in any material particular, or any material omission from, a load sheet⁸.

A person must not purport to issue a certificate for the purposes of the Air Navigation Order 2005 or of any regulations made under it or of Part 21, 66, 145, 147 or M unless he is authorised to do so, and must not issue such a certificate unless he has satisfied himself that all statements in it are correct⁹.

1 Ie any certificate, licence, approval, permission, exemption or other document, or copy or purported copy: see the Air Navigation Order 2005, SI 2005/1970, art 94(1).

2 Ie the Air Navigation Order 2005, SI 2005/1970.

3 See PARA 423 note 5. 'Part 147' means EC Commission Regulation 2042/2003 (OJ L315, 28.11.2003, p 1) on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks Annex IV (Part 147): Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'Part 66' see PARA 407 note 5; and as to the meaning of 'Part 21', 'Part 145' and 'Part M' see PARA 412 note 2.

4 Air Navigation Order 2005, SI 2005/1970, art 94(1)(a). A person acting in contravention of art 94 (except art 94(3): see note 7) is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.

5 Air Navigation Order 2005, SI 2005/1970, art 94(1)(b). As to the penalty for contravention of this provision see note 4.

6 Air Navigation Order 2005, SI 2005/1970, art 94(1)(c). As to the penalty for contravention of this provision see note 4.

7 Air Navigation Order 2005, SI 2005/1970, art 94(2). As to the penalty for contravention of this provision see note 4. All entries made in writing in such log books and records must be made in ink or indelible pencil: art 94(3). A person acting in contravention of art 94(3) is guilty of an offence and liable on summary conviction to a

fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 8. As to the preservation of documents generally see PARA 477 et seq.

8 Air Navigation Order 2005, SI 2005/1970, art 94(4). For the penalty for contravention of this provision see note 4.

9 Air Navigation Order 2005, SI 2005/1970, art 94(5), (6). For the penalty for contravention of this provision see note 4.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(i) General Duties/494. Action by commander.

(2) DUTIES BEFORE FLIGHT

(i) General Duties

494. Action by commander.

Before an aircraft takes off¹, its commander² must reasonably satisfy himself³:

- 391 (1) that the flight can safely be made, taking into account the latest information as to the route and aerodrome⁴ to be used, the weather reports and forecasts available⁵, and any alternative course of action which can be adopted if the flight cannot be completed as planned⁶;
- 392 (2) that the equipment, including radio apparatus, required to be carried in the circumstances of the intended flight is carried and is in a fit condition for use⁷;
- 393 (3) that the aircraft is in every way fit for the intended flight and that any required certificates of maintenance review⁸ are and will remain in force during the flight⁹;
- 394 (4) that the load carried by the aircraft is of such a weight and is so distributed and secured that it may safely be carried on the intended flight¹⁰;
- 395 (5) in the case of a flying machine¹¹ or airship, that sufficient fuel, oil and engine coolant, if required, is carried for the flight, including a safe margin for contingencies¹²;
- 396 (6) in the case of an airship or balloon, that sufficient ballast is carried for the intended flight¹³;
- 397 (7) in the case of a flying machine, that, having regard to the performance of the machine in the conditions to be expected on the intended flight, and to any obstructions at the places of departure and intended destination and on the intended route, it is capable of safely taking off, reaching and maintaining a safe height, and making a safe landing at the place of intended destination¹⁴;
- 398 (8) that any pre-flight check system established by the operator¹⁵ and set out in the operations manual¹⁶ or elsewhere has been complied with by each member of the crew¹⁷; and
- 399 (9) in the case of a balloon, that the balloon will be able to land clear of any congested area¹⁸.

In the case of any aircraft registered in the United Kingdom¹⁹ which is not a public transport aircraft²⁰, the commander must reasonably satisfy himself before take-off that the aircraft carries such additional equipment as the commander reasonably considers necessary for the purpose of facilitating the survival of the persons carried in the aircraft²¹.

In the case of an aeroplane which is not required to have an operations manual²², before commencing an ACAS equipped flight²³ the commander must reasonably satisfy himself that every member of the flight crew²⁴ has had specified training²⁵ relating to the airborne collision avoidance system in the aeroplane²⁶.

¹ As to customs formalities before taking off see PARAS 309-316; and as to the production of documents before flight see PARA 313.

2 As to the meaning of 'commander' see PARA 456. As to the commander's duties in respect of passengers see PARAS 495-496.

3 Air Navigation Order 2005, SI 2005/1970, art 52 (amended by SI 2007/274). A person acting in contravention of art 52 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

4 As to the meaning of 'aerodrome' see PARA 175.

5 As to weather reports and forecasts see PARA 548.

6 Air Navigation Order 2005, SI 2005/1970, art 52(a).

7 Air Navigation Order 2005, SI 2005/1970, art 52(b)(i). The flight may alternatively commence under and in accordance with the terms of a permission granted under art 21 (minimum equipment: see PARA 410): see art 52(b)(ii). For the requirements as to the carriage of equipment and radio equipment see PARAS 410-421.

8 le required by the Air Navigation Order 2005, SI 2005/1970, art 14(1): see PARA 406. As to certificates of maintenance review see PARAS 406-409.

9 Air Navigation Order 2005, SI 2005/1970, art 52(c).

10 Air Navigation Order 2005, SI 2005/1970, art 52(d). As to the loading of public transport aircraft see PARA 502.

11 As to what constitutes a flying machine see PARA 360.

12 Air Navigation Order 2005, SI 2005/1970, art 52(e). In the case of a flight for the purpose of public transport, the commander must also satisfy himself that instructions in the operations manual relating to fuel, oil and engine coolant have been complied with: art 52(e). As to public transport see PARA 363.

13 Air Navigation Order 2005, SI 2005/1970, art 52(f).

14 Air Navigation Order 2005, SI 2005/1970, art 52(g). For weight and performance requirements in the case of public transport aircraft see PARAS 500-501.

15 As to the meaning of 'operator' see PARA 437.

16 As to the operations manual see PARAS 509-510.

17 Air Navigation Order 2005, SI 2005/1970, art 52(h). As to the meaning of 'crew' see PARA 456.

18 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

19 Air Navigation Order 2005, SI 2005/1970, art 52(i). As to the meaning of 'congested area' see PARA 378 note 25.

20 As to the meaning of 'public transport aircraft' see PARA 363.

21 Air Navigation Order 2005, SI 2005/1970, art 52A(1), (2) (art 52A added by SI 2007/274). In satisfying himself as required by the Air Navigation Order 2005, SI 2005/1970, art 52A(2), the commander must have regard to the circumstances of the intended flight, including in particular the likelihood of ditching and the availability of search and rescue facilities: art 52A(3) (as so added).

22 le to which to which the Air Navigation Order 2005, SI 2005/1970, art 38 does not apply: see PARA 509.

23 For these purposes, 'ACAS equipped flight' means a flight on which an airborne collision avoidance system is required to be carried by the Air Navigation Order 2005, SI 2005/1970, art 20, Sch 5 (see PARA 419): art 61A(2) (art 61A added by SI 2007/3467).

24 As to the meaning of 'flight crew' see PARA 456.

25 le suitable training in the operation of the airborne collision avoidance system in the aeroplane and in the use of procedures suitable to the purposes of the equipment: Air Navigation Order 2005, SI 2005/1970, art 61A(5) (as added: see note 23). As to the procedures see art 61(b); and PARA 419 note 25. No person may act as a member of the flight crew on an ACAS equipped flight in an aeroplane to which art 61A applies unless he has had such training: art 61A(4) (as so added).

26 Air Navigation Order 2005, SI 2005/1970, art 61A(1), (3) (as added: see note 23).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(i) General Duties/495. Passenger briefing by commander.

495. Passenger briefing by commander.

The commander¹ of an aircraft registered in the United Kingdom² must, before the aircraft takes off on any flight, take all reasonable steps to ensure that all passengers are made familiar with the position and method of use of the emergency exits and the safety and emergency devices³ intended for their individual use in the case of an emergency⁴.

In any emergency during a flight, the commander must take all reasonable steps to ensure that all passengers are instructed in the emergency action which they should take⁵.

1 As to the meaning of 'commander' see PARA 456. The provisions of the Air Navigation Order 2005, SI 2005/1970, art 53 do not apply to the commander of an aircraft registered in the United Kingdom in relation to a flight under and in accordance with the terms of a police air operator's certificate: art 53(2). As to police air operators' certificates see PARAS 99-100.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 These devices are safety belts, safety harnesses, oxygen equipment, lifejackets, floor path lighting system and all other devices required by or under the Air Navigation Order 2005, SI 2005/1970: art 53(1)(a).

4 Air Navigation Order 2005, SI 2005/1970, art 53(1)(a). A person acting in contravention of art 53 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 Air Navigation Order 2005, SI 2005/1970, art 53(1)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(i) General Duties/496. Public transport of passengers.

496. Public transport of passengers.

The commander¹ of an aircraft registered in the United Kingdom² which is not a seaplane, when on a flight for the purpose of the public transport³ of passengers, must take reasonable steps to ensure that before take-off all passengers are given a demonstration of the method of using lifejackets where the flight is intended to reach a point more than 30 minutes' flying time from the nearest land⁴. Where such an aircraft is required to carry cabin crew⁵, the commander must also take reasonable steps to ensure that the passengers are given this demonstration on any flight which is intended to proceed beyond gliding distance from land or on which it is reasonably possible that the aircraft would be forced to land onto water in the event of any emergency occurring during take-off or during landing at the intended destination or any likely alternate destination⁶. In the case of an aircraft which is a seaplane, the commander must take all reasonable steps to ensure that before the aircraft takes off all passengers are given a demonstration of the method of use of the lifejackets required for the use of passengers⁷.

The commander of the aircraft must take all reasonable steps to ensure that, before the aircraft takes off and before it lands, the crew and any cabin crew are properly secured in their seats⁸. From the moment when, after the embarkation of its passengers, the aircraft first moves until after it has taken off, and before it lands until it comes to rest for the purposes of the disembarkation of its passengers, and whenever by reason of turbulent air or any emergency occurring during the flight he considers the precaution necessary, the commander must also take reasonable steps to ensure that (1) all passengers of two years of age or more are properly secured by safety belts or harnesses⁹; and (2) those items of baggage in the passenger compartment which he reasonably considers ought by virtue of their size, weight or nature to be properly secured are properly secured and, in the case of an aircraft capable of seating more than 30 passengers, that such baggage is either stowed in the passenger compartment stowage spaces approved by the Civil Aviation Authority ('CAA')¹⁰ for the purpose or carried in accordance with the terms of a written permission granted by the CAA¹¹.

Except where a pressure greater than 700 hectopascals is maintained in all passenger and crew compartments throughout the flight, the commander of the aircraft must take all reasonable steps to ensure that the method of using oxygen equipment is demonstrated to all passengers¹², that passengers and cabin crew are recommended to use oxygen when reaching a specified flight level¹³ and that during any period when the aircraft is flying above flight level 100¹⁴ oxygen is used by all the flight crew¹⁵.

1 As to the meaning of 'commander' see PARA 456.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to public transport see PARA 363. The provisions of the Air Navigation Order 2005, SI 2005/1970, art 54 do not apply to flights under and in accordance with the terms of a police air operator's certificate: art 54(1). As to police air operators' certificates see PARAS 99-100.

4 See the Air Navigation Order 2005, SI 2005/1970, art 54(2). A person acting in contravention of art 54 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 As to the meaning of 'cabin crew' see PARA 456. For the requirement to carry cabin crew see the Air Navigation Order 2005, SI 2005/1970, art 25(13); and PARA 461.

6 See the Air Navigation Order 2005, SI 2005/1970, art 54(3). However, where the requirement to give such a demonstration only arises because it is reasonably possible that the aircraft would be forced to land onto water at one or more of the likely alternate destinations, the demonstration need not be given until after the decision has been taken to divert to such a destination: Air Navigation Order 2005, SI 2005/1970, art 54(9).

7 Air Navigation Order 2005, SI 2005/1970, art 54(4).

8 See the Air Navigation Order 2005, SI 2005/1970, art 54(5).

9 Air Navigation Order 2005, SI 2005/1970, art 54(6). Children under the age of two years must be secured by means of a child restraint device: see art 54(6)(a).

10 As to passenger compartment baggage see PARA 504. As to the CAA see PARA 50 et seq.

11 Air Navigation Order 2005, SI 2005/1970, art 54(6).

12 The demonstration must take place before the aircraft reaches flight level 100 in the case of aircraft whose certificate of airworthiness was first issued on or after 1 January 1989 (see art 54(7)(a)) or flight level 130 in the case of aircraft whose certificate was first issued before that date (art 54(8)(a)). As to the meaning of 'flight level' see PARA 415 note 18.

13 The specified level is flight level 120 in the case of aircraft whose certificate of airworthiness was first issued on or after 1 January 1989 (see the Air Navigation Order 2005, SI 2005/1970, art 54(7)(b)) or flight level 130 in the case of aircraft whose certificate was first issued before that date (art 54(8)(b)).

14 Air Navigation Order 2005, SI 2005/1970, art 54(7)(c), (8)(c).

15 Air Navigation Order 2005, SI 2005/1970, art 54(7), (8). As to the meaning of 'flight crew' see PARA 456.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(i) General Duties/497. Non-public transport flights.

497. Non-public transport flights.

The commander¹ of an aircraft registered in the United Kingdom² and flying for any purpose other than public transport³ must, except in a case where a pressure greater than 700 hectopascals is maintained in all passenger and crew compartments throughout the flight, take all reasonable steps to ensure that⁴:

- 400 (1) before the aircraft reaches flight level 130 the method of use of the oxygen provided in the aircraft⁵ is demonstrated to all passengers⁶;
- 401 (2) when flying above flight level 130 all passengers are recommended to use oxygen⁷;
- 402 (3) during any period when the aircraft is flying above flight level 100 up to and including flight level 130 oxygen is used by all the flight crew of the aircraft for that part of the flight at those altitudes that is of more than 30 minutes' duration⁸; and
- 403 (4) during any period when the aircraft is flying above flight level 130 oxygen is used by all the flight crew of the aircraft⁹.

1 As to the meaning of 'commander' see PARA 456.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to public transport see PARA 363.

4 Air Navigation Order 2005, SI 2005/1970, art 54A(1), (2) (art 54A added by SI 2007/274).

5 ie in compliance with the requirements of the Air Navigation Order 2005, SI 2005/1970, art 19, Sch 4: see PARA 410.

6 Air Navigation Order 2005, SI 2005/1970, art 54A(2)(a) (as added: see note 4).

7 Air Navigation Order 2005, SI 2005/1970, art 54A(2)(b) (as added: see note 4).

8 Air Navigation Order 2005, SI 2005/1970, art 54A(2)(c) (as added: see note 4).

9 Air Navigation Order 2005, SI 2005/1970, art 54A(2)(d) (as added: see note 4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(i) General Duties/498. Obstruction of exits and doors.

498. Obstruction of exits and doors.

Where a public transport¹ aeroplane or helicopter registered in the United Kingdom² is carrying passengers, every exit³ and internal door in the aircraft must be in working order and, during take-off and landing and during any emergency, must be kept free of obstruction and must not be fastened by locking or otherwise so as to prevent, hinder or delay its use by passengers⁴.

However, if an exit is not required for use by passengers, cargo⁵ may obstruct it⁶; further, a door between the flight crew compartment and any adjacent compartment to which the passengers have access may be locked or bolted if the commander⁷ of the aeroplane or helicopter so determines, for the purpose of preventing access by passengers to the flight crew compartment⁸.

1 As to public transport see PARA 363.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to exits see PARA 411.

4 Air Navigation Order 2005, SI 2005/1970, art 72(1), (2). A person acting in contravention of art 72 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. An exception is made for any internal door which is so placed that it cannot interfere with the exit of passengers in an emergency if it is not in working order: art 72(3)(c).

5 As to the meaning of 'cargo' see PARA 363 note 5.

6 Air Navigation Order 2005, SI 2005/1970, art 72(3)(a). Arrangements under which the exit is not so required must be approved by the Civil Aviation Authority ('CAA'), either generally or in relation to a class of aeroplane or helicopter or a particular aeroplane or helicopter: art 72(3)(a). As to the CAA see PARA 50 et seq.

7 As to the meaning of 'commander' see PARA 456.

8 Air Navigation Order 2005, SI 2005/1970, art 72(3)(b). This action by the commander has become the practice in view of hijacking offences. As to hijacking offences see PARA 624.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(i) General Duties/499. Action by the commander of an aircraft towing a glider.

499. Action by the commander of an aircraft towing a glider.

The commander¹ of an aircraft which is about to tow a glider² must satisfy himself, before the towing aircraft takes off³:

- 404 (1) that the tow rope is in good condition and is of adequate strength for the purpose, and that the combination of towing aircraft and glider, having regard to its performance in the expected conditions and to any obstructions at the place of departure or on the intended route, is capable of safely taking off and reaching and maintaining a safe height at which to separate, and that thereafter the towing aircraft can make a safe landing at the place of intended destination⁴;
- 405 (2) that signals have been agreed and communication established with persons suitably stationed so as to enable the glider to take off safely⁵; and
- 406 (3) that emergency signals have been agreed between the commanders of the towing aircraft and of the glider in respect of the glider's release⁶.

The glider must be attached to the towing aircraft by means of the tow rope before the aircraft takes off⁷.

1 As to the meaning of 'commander' see PARA 456.

2 As to the meaning of 'glider' see PARA 360 note 6.

3 Air Navigation Order 2005, SI 2005/1970, art 63(3). A person acting in contravention of art 63 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. As to the towing of gliders generally see PARA 535.

4 Air Navigation Order 2005, SI 2005/1970, art 63(3)(a).

5 Air Navigation Order 2005, SI 2005/1970, art 63(3)(b).

6 Air Navigation Order 2005, SI 2005/1970, art 63(3)(c). These signals are to be used, respectively, by the commander of the towing aircraft to indicate that the tow must be released immediately by the glider, and by the commander of the glider to indicate that the tow cannot be released: art 63(3)(c).

7 Air Navigation Order 2005, SI 2005/1970, art 63(4). See note 3.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/A. WEIGHT AND PERFORMANCE/500. Weight and performance requirements in general.

(ii) Public Transport Aircraft

A. WEIGHT AND PERFORMANCE

500. Weight and performance requirements in general.

The requirements as to weight and performance which must be complied with before an aircraft registered in the United Kingdom¹ is permitted to fly for the purpose of public transport² are prescribed in great detail³. The assessment of the ability of an aircraft to comply with the provisions as to operating conditions and performance requirements⁴ must be based on the information as to its performance approved by the state of design⁵ and contained in the flight manual⁶ for the aeroplane or helicopter⁷.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

2 As to public transport see PARA 363.

3 See the Air Navigation Order 2005, SI 2005/1970, arts 43-46; and the Air Navigation (General) Regulations 2006, SI 2006/601, regs 4-10, Schs 1, 2. A person acting in contravention of the Air Navigation Order 2005, SI 2005/1970, arts 43-46 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 7.

4 Ie the Air Navigation Order 2005, SI 2005/1970, arts 43-46; and the Air Navigation (General) Regulations 2006, SI 2006/601, regs 44(1), 45(1).

5 'State of design' means the state having jurisdiction over the organisation responsible for the type design of an aircraft: Air Navigation Order 2005, SI 2005/1970, art 155(1).

6 As to the meaning of 'flight manual' see PARA 376 note 8.

7 Air Navigation Order 2005, SI 2005/1970, arts 44(2), 45(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/A. WEIGHT AND PERFORMANCE/501. Purpose of weight and performance requirements.

501. Purpose of weight and performance requirements.

The purpose of the weight and performance requirements is to ensure that the performance of the aircraft is adequate for safety at all stages of the intended flight, taking into account the factors, such as temperature, altitude and weather conditions, which affect the performance of the aircraft. The requirements vary in detail according to whether the aircraft has no performance group classification in its certificate of airworthiness, has a Group A classification, or has a Group B, C, D, E, F, X or Z classification¹.

¹ See the Air Navigation (General) Regulations 2006, SI 2006/601, regs 4-10, Schs 1, 2. As to certificates of airworthiness see PARAS 376-384.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/B. LOADING/502. Operator's instructions.

B. LOADING

502. Operator's instructions.

The operator¹ of an aircraft registered in the United Kingdom² must not cause or permit it to be loaded for a flight for the purpose of public transport³, or any load to be suspended from it, except under the supervision of a person whom he has caused to be furnished with written instructions as to the distribution and securing of the load so as to ensure that the load may safely be carried on the flight and any conditions of the certificate of airworthiness or flight manual⁴ for the aircraft relating to the loading of the aircraft are complied with⁵. These instructions must indicate the weight of the aircraft prepared for service⁶, and must show the position of the centre of gravity of the aircraft at that weight⁷. This requirement does not, however, apply in relation to certain flights⁸.

The operator must not cause or permit the aircraft to be loaded in contravention of these instructions⁹.

1 As to the meaning of 'operator' see PARA 437.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to public transport see PARA 363.

4 As to certificates of airworthiness and flight manuals see PARAS 376-384. As to the meaning of 'flight manual' see PARA 376 note 8.

5 Air Navigation Order 2005, SI 2005/1970, art 43(1). For the power to direct that an aircraft is not to fly if these provisions are not complied with see art 144(1); and PARA 528. A person acting in contravention of art 43 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

6 I.e. the aggregate of the weight of the aircraft shown in the weight schedule and the weight of such additional items in or on the aircraft as the operator thinks fit to include: Air Navigation Order 2005, SI 2005/1970, art 43(2). The instructions must also indicate these additional items: art 43(2). As to the weight schedule see art 23; and PARA 414.

7 Air Navigation Order 2005, SI 2005/1970, art 43(2).

8 Air Navigation Order 2005, SI 2005/1970, art 43(3). The provisions of art 43(2) do not apply in relation to a flight if (1) the aircraft's maximum total weight authorised does not exceed 1,150 kg; (2) the aircraft's maximum total weight authorised does not exceed 2,730 kg, the flight is not intended to last more than 60 minutes and it is either a flight solely for the purpose of training persons to perform duties in an aircraft or a flight intended to begin and end at the same aerodrome; or (3) the aircraft is a helicopter the maximum total weight authorised of which does not exceed 3,000 kg and the total seating capacity of which does not exceed five persons: art 43(3)(a)-(c). As to the meaning of 'maximum total weight authorised' see PARA 363 note 9.

9 Air Navigation Order 2005, SI 2005/1970, art 43(4). See note 5.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/B. LOADING/503. Load sheets.

503. Load sheets.

The person supervising the loading of the aircraft must, before the commencement of a flight for the purpose of public transport¹, prepare and sign a load sheet in duplicate conforming to the prescribed requirements²; he must then, unless he is the commander³ of the aircraft, submit the load sheet for examination to the commander, who must sign it⁴.

This requirement does not apply if the load and its distribution and securing upon the next intended flight are to be unchanged from the previous flight and the commander makes and signs an endorsement to that effect upon the load sheet for the previous flight⁵.

A copy of the load sheet must be carried in the aircraft when so required⁶ until the completion of the flights to which it relates, and a copy of the load sheet and of the operator's instructions must be preserved by the operator for six months and must not be carried in the aircraft⁷.

1 As to public transport see PARA 363.

2 This includes particulars of (1) the nationality mark and registration mark of the aircraft concerned; (2) the flight to which the load sheet relates; (3) the total weight of the aircraft as loaded for that flight; (4) the weights of the several items from which the total weight of the aircraft has been calculated; (5) the manner in which the load is distributed; and (6) the resulting position of the centre of gravity of the aircraft. There must also be at the foot or end of the load sheet a certificate signed by the person supervising the loading of the aircraft, that the aircraft has been loaded in accordance with the written instructions furnished to him by the operator of the aircraft: Air Navigation (General) Regulations 2006, SI 2006/601, reg 4. As to the operator's loading instructions see PARA 502.

3 As to the meaning of 'commander' see PARA 456.

4 Air Navigation Order 2005, SI 2005/1970, art 43(5). A person acting in contravention of art 35 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 Air Navigation Order 2005, SI 2005/1970, art 43(6). See note 4. In addition, the requirement does not apply if (1) the aircraft's maximum total weight authorised does not exceed 1,150 kg; (2) the aircraft's maximum total weight authorised does not exceed 2,730 kg, the flight is not intended to last more than 60 minutes and it is either a flight solely for the purpose of training persons to perform duties in an aircraft or a flight intended to begin and end at the same aerodrome; or (3) the aircraft is a helicopter the maximum total weight authorised of which does not exceed 3,000 kg and the total seating capacity of which does not exceed five persons: art 45(3), (7). As to the meaning of 'maximum total weight authorised' see PARA 363 note 9.

6 Ie when required by the Air Navigation Order 2005, SI 2005/1970, art 86: see PARA 484.

7 Air Navigation Order 2005, SI 2005/1970, art 43(8), which is expressed to be subject to art 43(9). In the case of an aeroplane of which the maximum total weight authorised does not exceed 2,370 kg, or a helicopter, if it is not reasonably practicable to keep the copy of the load sheet on the ground, it may be carried in the aeroplane or helicopter in a container approved by the Civil Aviation Authority ('CAA') for that purpose: art 43(9). As to the CAA see PARA 50 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/B. LOADING/504. Passenger compartment baggage.

504. Passenger compartment baggage.

The operator¹ of an aircraft registered in the United Kingdom² and flying for the purpose of the public transport³ of passengers must not cause or permit baggage to be carried in the passenger compartment of the aircraft unless it can be properly secured⁴. Where the aircraft can seat more than 30 passengers, such baggage must not exceed the capacity of the spaces provided for stowing baggage as approved by the Civil Aviation Authority ('CAA')⁵. However, baggage which exceeds that capacity may be carried in the compartment if it is so carried in accordance with the terms of a permission granted by the CAA⁶.

1 As to the meaning of 'operator' see PARA 437.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to public transport see PARA 363.

4 Air Navigation Order 2005, SI 2005/1970, art 43(10). A person acting in contravention of art 43 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 Air Navigation Order 2005, SI 2005/1970, art 43(10). As to the CAA see PARA 50 et seq.

6 Air Navigation Order 2005, SI 2005/1970, art 43(10)(b). Such a permission is granted pursuant to art 54(6) (b): see PARA 496.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/C. OPERATOR'S DUTIES/505. Operator's responsibilities.

C. OPERATOR'S DUTIES

505. Operator's responsibilities.

The operator¹ of an aircraft registered in the United Kingdom² must not permit the aircraft to fly for the purpose of public transport³ without first⁴ (1) designating from among the flight crew⁵ a pilot to be the commander⁶ for the flight⁷; (2) satisfying himself by every reasonable means that the aeronautical radio stations⁸ and navigational aids serving the intended route or any planned diversion from it, are adequate for the safe navigation of the aircraft⁹; and (3) satisfying himself by every reasonable means that every place (whether or not an aerodrome¹⁰) at which it is intended to take off or land and any alternate place at which a landing may be made are suitable for the purpose and, in particular, that they will be adequately manned and equipped at the time at which it is reasonably estimated such a take-off or landing will be made to ensure so far as practicable the safety of the aircraft and its passengers¹¹.

1 As to the meaning of 'operator' see PARA 437.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to public transport see PARA 363.

4 Air Navigation Order 2005, SI 2005/1970, art 42(1). A person acting in contravention of art 42 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 As to the meaning of 'flight crew' see PARA 456.

6 As to the meaning of 'commander' see PARA 456.

7 Air Navigation Order 2005, SI 2005/1970, art 42(1)(a).

8 'Aeronautical radio station' means a radio station on the surface which transmits or receives signals for the purpose of assisting aircraft; and 'appropriate aeronautical radio station' in relation to an aircraft means such a station serving the area in which the aircraft is for the time being: the Air Navigation Order 2005, SI 2005/1970, art 155(1).

9 Air Navigation Order 2005, SI 2005/1970, art 42(1)(b).

10 As to the meaning of 'aerodrome' see PARA 175.

11 Air Navigation Order 2005, SI 2005/1970, art 42(1)(c). The operator need not satisfy himself of the adequacy of fire-fighting, search, rescue or other services required only after the occurrence of an accident: art 42(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/C. OPERATOR'S DUTIES/506. Duty to operate flight data monitoring programme.

506. Duty to operate flight data monitoring programme.

The operator¹ of an aircraft registered in the United Kingdom² flying for the purpose of public transport³ must establish and maintain an accident prevention and flight safety programme⁴. The operator of an aeroplane registered in the United Kingdom with a maximum total weight authorised⁵ of more than 27,000 kilograms flying for the purpose of public transport must include a flight data monitoring programme as part of its accident prevention and flight safety programme⁶. The sole objective of an accident prevention and flight safety programme is the prevention of accidents and incidents, and each programme must be designed and managed to meet that objective⁷. It is not the purpose of an accident prevention and flight safety programme to apportion blame or liability⁸.

1 As to the meaning of 'operator' see PARA 437.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to public transport see PARA 363.

4 Air Navigation Order 2005, SI 2005/1970, art 41(1). 'Accident prevention and flight safety programme' means a programme designed to detect and eliminate or avoid hazards in order to improve the safety of flight operations: art 155(1).

5 As to the meaning of 'maximum total weight authorised' see PARA 363 note 9.

6 Air Navigation Order 2005, SI 2005/1970, art 41(2). 'Flight data monitoring programme' means a programme of analysing recorded flight data in order to improve the safety of flight operations: art 155(1). A person acting in contravention of art 41 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

7 Air Navigation Order 2005, SI 2005/1970, art 41(3).

8 Air Navigation Order 2005, SI 2005/1970, art 41(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/C. OPERATOR'S DUTIES/507. Duty to ensure training and practice of crew.

507. Duty to ensure training and practice of crew.

The operator¹ of an aircraft registered in the United Kingdom² must not permit any person to be a member of its crew³ during any flight⁴ for the purpose of public transport⁵ unless that person has had specified training, experience, practice and periodical tests in respect of the duties which he is to perform⁶, and the operator has satisfied himself that that person is competent to perform his duties and, in particular, to use the equipment provided in the aircraft⁷.

1 As to the meaning of 'operator' see PARA 437.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to the meaning of 'crew' see PARA 456.

4 This does not apply to a flight for the sole purpose of training persons to perform duties in aircraft: Air Navigation Order 2005, SI 2005/1970, art 42(3).

5 As to public transport see PARA 363.

6 The training and tests specified in relation to members of the crew are contained in the Air Navigation Order 2005, SI 2005/1970, art 42(3), Sch 9 Pt C. The operator must provide and keep up to date a training manual for these purposes: see art 40, Sch 9 Pt B.

7 Air Navigation Order 2005, SI 2005/1970, art 42(3). The operator must maintain, preserve, produce and furnish information respecting records relating to these matters in accordance with Sch 9 Pt C: art 42(4). A person acting in contravention of art 42 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. As to licensing of crew members see PARA 445.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/C. OPERATOR'S DUTIES/508. Duty to avoid practice of emergency manoeuvres on passenger flights.

508. Duty to avoid practice of emergency manoeuvres on passenger flights.

The operator¹ of an aircraft registered in the United Kingdom² must not permit any member of the flight crew³, during any flight for the purpose of the public transport⁴ of passengers, to simulate emergency manoeuvres and procedures which the operator has reason to believe would adversely affect the flight characteristics of the aircraft⁵.

1 As to the meaning of 'operator' see PARA 437.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to the meaning of 'flight crew' see PARA 456.

4 As to public transport see PARA 363.

5 Air Navigation Order 2005, SI 2005/1970, art 42(5). A person acting in contravention of art 42 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/C. OPERATOR'S DUTIES/509. Operations manual.

509. Operations manual.

The operator¹ of a public transport aircraft² registered in the United Kingdom³ must make available to each member of his operating staff⁴ an operations manual⁵; he must ensure that each copy of the manual is kept up to date⁶ and that on each flight every member of the crew has access to a copy of every part of it which is relevant to his duties on the flight⁷. He must also furnish the Civil Aviation Authority ('CAA')⁸ with a copy of the manual not less than 30 days prior to the flight of the aircraft to which the manual relates, failing which the aircraft must not fly⁹; he must furnish to the CAA any amendments or additions before or immediately after they come into effect¹⁰; and he must make such amendments or additions to the manual as the CAA requires to ensure the safety of the aircraft or of persons or property carried in it or the safety, efficiency or regularity of air navigation¹¹.

1 As to the meaning of 'operator' see PARA 437.

2 As to the meaning of 'public transport aircraft' see PARA 363.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq. The provisions of the Air Navigation Order 2005, SI 2005/1970, art 38 do not apply to an aircraft for the time being used solely for flights not intended to exceed 60 minutes which are either solely for the purpose of training persons to perform duties in an aircraft or intended to begin and end at the same aerodrome: art 38(1) (a). They also do not apply to an aircraft flying or intended by the operator of the aircraft to fly solely under and in accordance with the terms of a police operator's certificate: art 38(1)(b). As to police air operators' certificates see art 7; and PARAS 99-100.

4 'Operating staff' means the servants and agents employed by the operator, whether or not as members of the crew, to ensure that flights of the aircraft are conducted in a safe manner, and includes an operator who himself performs those functions: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'crew' see PARAS 456.

5 Air Navigation Order 2005, SI 2005/1970, art 38(2)(a). As to the contents of the manual see PARA 510. A person acting in contravention of art 38 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 7.

6 Air Navigation Order 2005, SI 2005/1970, art 38(2)(b).

7 Air Navigation Order 2005, SI 2005/1970, art 38(2)(c).

8 As to the CAA see PARA 50 et seq.

9 Air Navigation Order 2005, SI 2005/1970, art 38(4).

10 Air Navigation Order 2005, SI 2005/1970, art 38(5). If the amendment or addition concerns the operation of an aircraft to which the operations manual did not previously relate, that aircraft must not fly for the purpose of public transport until the amendment or addition has been furnished to the CAA: art 38(6).

11 Air Navigation Order 2005, SI 2005/1970, art 38(7).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/C. OPERATOR'S DUTIES/510. Contents of operations manual.

510. Contents of operations manual.

The operations manual¹ must contain all such information and instructions as may be necessary to enable the operating staff² to perform their duties³, but it need not contain any information or instructions available in a flight manual accessible to the persons by whom the information or instructions may be required⁴.

In particular, the operations manual must contain information and instructions relating to the number of crew to be carried in the aircraft⁵, the capacities in which they are to act and the order and circumstances in which crew members are to assume command⁶; the respective duties of crew members and other members of the operating staff⁷; the limits on flight times⁸; such technical particulars as to the aircraft, its engines, equipment and performance as may be necessary to enable the flight crew to perform their respective duties⁹; the computing of the aircraft's fuel and oil needs¹⁰ and of any oxygen and oxygen equipment required to be carried¹¹, including the circumstances in which the crew and passengers are to use oxygen¹²; the check system to be followed on take off, landing and in an emergency¹³; the circumstances in which a radio watch is to be maintained¹⁴; the reporting in flight of meteorological observations¹⁵; minimum altitudes for safe flight on each stage of the route to be flown and any planned diversion¹⁶; aerodrome operating minima¹⁷; emergency flight procedures¹⁸; procedures for the use of cosmic radiation detection equipment if the aircraft is intended to fly over 49,000 feet¹⁹; the labelling, marking and loading of dangerous goods as well as crew responsibilities and emergency procedures in this respect²⁰; particulars of permission to carry minimum equipment²¹; procedures for the operation of any airborne collision avoidance system carried on the aircraft²²; the establishment and maintenance of an accident prevention and flight safety programme²³; and, in the case of a helicopter, the maximum approved passenger seating configuration²⁴.

In addition there must be contained in a route guide, which may be in the form of a separate volume, information and instructions relating to communication, navigational aids, aerodromes, local regulations, in-flight procedures, approach and landing procedures, and such other information as the operator²⁵ may deem necessary for the proper conduct of flight operations²⁶.

1 As to the operations manual see PARA 509.

2 As to the meaning of 'operating staff' see PARA 509 note 4.

3 Air Navigation Order 2005, SI 2005/1970, art 38(3)(a). A person acting in contravention of art 38 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

4 Air Navigation Order 2005, SI 2005/1970, art 38(3)(b). As to the meaning of 'flight manual' see PARA 376 note 8.

5 As to the crew see PARAS 456-461. As to the meaning of 'crew' see PARA 456.

6 Air Navigation Order 2005, SI 2005/1970, art 38(3)(b), Sch 9 Pt A para 1(a).

7 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(b).

8 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(c). Schemes for the regulation of flight times are made under art 82(1)(c)(i): see PARA 464.

9 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(d). As to the meaning of 'flight crew' see PARA 456.

10 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(e). The instructions must take account of all circumstances likely to be encountered, including the possibility of failure of one or more of the aircraft's engines: see Sch 9 Pt A para 1(e).

11 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(f). As to the requirement to carry oxygen see art 19(2), Sch 4 para 6 Scales L1, L2; and PARA 410.

12 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(i).

13 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(g).

14 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(h).

15 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(k).

16 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(l). The minimum altitudes must not be lower than any which may be applicable under the law of the United Kingdom or of the countries being flown over: Sch 9 Pt A para 1(l). As to minimum altitudes see PARAS 576-580. As to the meaning of 'United Kingdom' see PARA 30 note 1. However, in relation to any flight which is not one of a series of flights between the same two places it is sufficient if, to the extent that it is not practicable to comply with this requirement, the manual contains such information and instructions as will enable the equivalent data to be ascertained before take-off: Sch 9 Pt A para 2.

17 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(m). See art 47(2); and PARA 512. As to the meaning of 'aerodrome' see PARA 175.

18 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(n). Emergency flight procedures include procedures for the instruction of passengers in the position and use of emergency equipment and procedures to be adopted when the commander of the aircraft becomes aware that another aircraft or vessel is in distress and needs assistance: Sch 9 Pt A para 1(n).

19 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(o).

20 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(p).

21 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(q). Permission is granted pursuant to art 21: see PARA 410.

22 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(r). As to the use of an airborne collision avoidance system see PARA 419.

23 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(s). As to the meaning of 'accident prevention and flight safety programme' see PARA 506 note 4.

24 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(t) (added by SI 2007/274).

25 As to the meaning of 'operator' see PARA 437.

26 Air Navigation Order 2005, SI 2005/1970, Sch 9 Pt A para 1(j). However, in relation to any flight which is not one of a series of flights between the same two places it is sufficient if, to the extent that it is not practicable to comply with this requirement, the manual contains such information and instructions as will enable the equivalent data to be ascertained before take-off: Sch 9 Pt A para 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/D. MINIMUM WEATHER CONDITIONS/511. United Kingdom aircraft.

D. MINIMUM WEATHER CONDITIONS

511. United Kingdom aircraft.

There are detailed provisions for regulating flights by public transport aircraft¹ registered in the United Kingdom² by reference to the weather conditions existing at the time of take off or landing³.

1 As to the meaning of 'public transport aircraft' see PARA 363.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 See PARAS 512-514. As to the general duties imposed by the Rules of the Air Regulations 2007, SI 2007/734, upon persons in command of aircraft in relation to weather conditions see also PARA 548.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/D. MINIMUM WEATHER CONDITIONS/512. Aerodrome operating minima.

512. Aerodrome operating minima.

The operator¹ of a public transport aircraft² registered in the United Kingdom³ must establish and include in the operations manual⁴ relating to the aircraft particulars of aerodrome operating minima appropriate to every aerodrome of intended departure or landing and every alternate aerodrome⁵. Where no operations manual is required, or in relation to any flight it is not practicable to include the aerodrome operating minima in the operations manual, prior to the commencement of the flight the operator must cause the same particulars to be given to the commander in writing, and he must also cause a copy of those particulars to be retained outside the aircraft for a minimum period of three months after the flight⁶.

'Aerodrome operating minima', in relation to the operation of an aircraft at an aerodrome, means the cloud ceiling⁷ and runway visual range⁸ for take-off, and the decision height⁹ or minimum descent height¹⁰, the runway visual range and visual reference for landing, which are the minimum for the operation of that aircraft at that aerodrome¹¹. The specified¹² aerodrome operating minima must not permit a landing or take-off in circumstances where the relevant aerodrome operating minima declared by the competent authority¹³ would prohibit it, unless that authority otherwise permits in writing¹⁴.

In establishing the aerodrome operating minima, the operator must take into account:

- 407 (1) the type, performance and handling characteristics of the aircraft and any relevant conditions in its certificate of airworthiness¹⁵;
- 408 (2) the composition of its crew¹⁶;
- 409 (3) the physical characteristics of the relevant aerodrome and its surroundings¹⁷;
- 410 (4) the dimensions of the runways which may be selected for use¹⁸; and
- 411 (5) any aids, visual or otherwise, to assist the aircraft in approach, landing or take-off¹⁹;

and he must establish in relation to each runway which may be selected for use such aerodrome operating minima as are appropriate to each likely set of circumstances which can reasonably be expected²⁰.

1 As to the meaning of 'operator' see PARA 437.

2 As to the meaning of 'public transport aircraft' see PARA 363.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

4 As to the operations manual see PARAS 509-510.

5 Air Navigation Order 2005, SI 2005/1970, arts 38(3), 47(1), (2), Sch 9 Pt A para 1(m). As to the meaning of 'aerodrome' see PARA 175.

The operations manual should contain sufficient data and instructions to allow the commander to calculate the appropriate aerodrome operating minima appropriate for aerodromes the use of which could not reasonably have been foreseen prior to the flight: art 47(4). As to the meaning of 'commander' see PARA 456.

A person acting in contravention of art 47 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

6 Air Navigation Order 2005, SI 2005/1970, art 47(5). As to the circumstances in which an operations manual is not required see PARA 509 note 3.

7 'Cloud ceiling' in relation to an aerodrome means the vertical distance from the elevation of the aerodrome to the lowest part of any cloud visible from the aerodrome which is sufficient to obscure more than half the sky so visible: the Air Navigation Order 2005, SI 2005/1970, art 155(1).

8 'Runway visual range' in relation to a runway means the distance in the direction of take-off or landing over which the runway lights or surface markings may be seen from the touchdown zone as calculated by either human observation or instruments in the vicinity of the touchdown zone or, where that is not reasonably practicable, in the vicinity of the mid-point of the runway; and the distance, if any, communicated to the commander of an aircraft by or on behalf of the person in charge of the aerodrome as being the runway visual range is to be taken to be the runway visual range for the time being: Air Navigation Order 2005, SI 2005/1970, art 155(1).

9 'Decision height' in relation to the operation of an aircraft at an aerodrome means the height in a precision approach at which a missed approach must be initiated if the required visual reference to continue that approach has not been established: Air Navigation Order 2005, SI 2005/1970, art 155(1). 'Precision approach' means an instrument approach using the instrument landing system, microwave landing system or precision approach radar for guidance in both azimuth and elevation; and 'precision approach radar' means radar equipment designed to enable an air traffic controller to determine accurately an aircraft's position whilst it is carrying out an approach to land so that the air traffic controller can provide instructions and guidance to the pilot to enable him to manoeuvre the aircraft relative to a defined approach path: art 155(1).

10 'Minimum descent height' in relation to the operation of an aircraft at an aerodrome means the height in a non-precision approach below which descent may not be made without the required visual reference: Air Navigation Order 2005, SI 2005/1970, art 155(1). A 'non-precision approach' is an instrument approach using non-visual aids for guidance in azimuth or elevation which is not a precision approach: art 155(1).

11 Air Navigation Order 2005, SI 2005/1970, art 155(1).

12 'Specified' in relation to aerodrome operating minima means such particulars of aerodrome operating minima as have been specified by the operator in, or are ascertainable by reference to, the operations manual relating to that aircraft, or furnished in writing to the commander of the aircraft by the operator in accordance with the Air Navigation Order 2005, SI 2005/1970, art 47(3): art 47(12).

13 As to the meaning of 'competent authority' see PARA 415 note 9.

14 See the Air Navigation Order 2005, SI 2005/1970, art 47(6).

15 Air Navigation Order 2005, SI 2005/1970, art 47(7)(a).

16 Air Navigation Order 2005, SI 2005/1970, art 47(7)(b). As to the meaning of 'crew' see PARA 456.

17 Air Navigation Order 2005, SI 2005/1970, art 47(7)(c).

18 Air Navigation Order 2005, SI 2005/1970, art 47(7)(d).

19 Air Navigation Order 2005, SI 2005/1970, art 47(7)(e).

20 Air Navigation Order 2005, SI 2005/1970, art 47(7).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/D. MINIMUM WEATHER CONDITIONS/513. Regulation of flights according to aerodrome operating minima.

513. Regulation of flights according to aerodrome operating minima.

No public transport aircraft¹ registered in the United Kingdom² may commence a flight³ at a time when⁴ (1) the cloud ceiling⁵ or the runway visual range⁶ at the aerodrome⁷ of departure is less than the minimum specified for take-off from that aerodrome⁸; or (2) according to the information available to its commander⁹, the aircraft would not be able, without contravention of the minimum height provisions¹⁰, to land at the aerodrome of intended destination at the estimated time of arrival there and at any alternate aerodrome¹¹ at any time at which according to a reasonable estimate the aircraft would arrive there¹².

When making a descent to an aerodrome, a public transport aircraft registered in the United Kingdom must not (a) descend from a height of 1,000 feet or more above the aerodrome to a height less than 1,000 feet above the aerodrome if the runway visual range there is at the time less than the specified minimum for landing¹³; or (b) continue its approach to landing¹⁴ at any aerodrome by flying below the relevant specified decision height or descend below the minimum descent height unless, in either case, from such a height the specified visual reference for landing is established and maintained¹⁵.

1 As to the meaning of 'public transport aircraft' see PARA 363.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to the meaning of 'flight' see PARA 530.

4 Air Navigation Order 2005, SI 2005/1970, art 47(1), (8). A person acting in contravention of art 38 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 As to the meaning of 'cloud ceiling' see PARA 512 note 7.

6 As to the meaning of 'runway visual range' see PARA 512 note 8.

7 As to the meaning of 'aerodrome' see PARA 175.

8 Air Navigation Order 2005, SI 2005/1970, art 47(8)(a).

9 As to the meaning of 'commander' see PARA 456.

10 I.e. the Air Navigation Order 2005, SI 2005/1970, art 47(9) or (10): see the text and notes 13-15.

11 As to alternate aerodromes see PARA 514.

12 Air Navigation Order 2005, SI 2005/1970, art 47(8)(b).

13 Air Navigation Order 2005, SI 2005/1970, art 47(9). As to the meaning of 'public transport aircraft' see PARA 363.

14 'Approach to landing' means that portion of the flight of the aircraft, when approaching to land, in which it is descending below a height of 1,000 feet above the relevant specified decision height or minimum descent height: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'decision height' see PARA 512 note 9; and as to the meaning of 'minimum descent height' see PARA 512 note 10.

15 Air Navigation Order 2005, SI 2005/1970, art 47(10).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/D. MINIMUM WEATHER CONDITIONS/514. Selection of alternate aerodromes.

514. Selection of alternate aerodromes.

If according to the available information a public transport aircraft¹ registered in the United Kingdom² would, as regards any particular flight, be required³ to be flown in accordance with instrument flight rules⁴ at the aerodrome⁵ of intended landing, the commander⁶ of the aircraft must, prior to take-off, select an alternate aerodrome unless no aerodrome suitable for that purpose is available⁷.

1 As to the meaning of 'public transport aircraft' see PARA 363.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 Is required by the Rules of the Air Regulations 2007, SI 2007/734.

4 As to instrument flight rules see PARAS 552-557.

5 As to the meaning of 'aerodrome' see PARA 175.

6 As to the meaning of 'commander' see PARA 456.

7 Air Navigation Order 2005, SI 2005/1970, art 47(11); Interpretation Act 1978 s 17(2). A person acting in contravention of the Air Navigation Order 2005, SI 2005/1970, art 47 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/D. MINIMUM WEATHER CONDITIONS/515. Foreign aircraft.

515. Foreign aircraft.

A public transport aircraft¹ registered in a country other than the United Kingdom² must not fly in or over the United Kingdom unless its operator³ has made available to the flight crew⁴ aerodrome operating minima⁵ in respect of every aerodrome at which it is intended to land or take off and every alternate aerodrome which are no less restrictive than either minima calculated in accordance with the notified⁶ method for calculating aerodrome operating minima, or minima which comply with the law of the country in which the aircraft is registered, whichever are the more restrictive⁷. Such an aircraft must not take off or land at an aerodrome in the United Kingdom in contravention of these minima⁸.

A public transport aircraft registered in a country other than the United Kingdom must not conduct certain categories of approach or landing⁹ or take off when the relevant runway visual range¹⁰ is less than 150 metres, otherwise than under and in accordance with the terms of an approval granted in accordance with the law of the country in which it is registered¹¹.

When making a descent to an aerodrome a public transport aircraft registered in a country other than the United Kingdom must not (1) descend from a height of 1,000 feet or more to a height of less than 1,000 feet above the aerodrome if the relevant runway visual range at the aerodrome is at the time less than the specified minimum for landing¹²; (2) continue an approach to landing at any aerodrome by flying below the relevant specified decision height¹³ or descend below the relevant specified minimum descent height¹⁴, unless, in either case, from such a height the specified visual reference for landing is established and is maintained¹⁵.

1 As to the meaning of 'public transport aircraft' see PARA 363.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 As to the meaning of 'operator' see PARA 437.

4 As to the meaning of 'flight crew' see PARA 456.

5 As to the meaning of 'aerodrome operating minima' see PARA 512; and as to the meaning of 'aerodrome' see PARA 175.

6 As to the meaning of 'notified' see PARA 178 note 6.

7 Air Navigation Order 2005, SI 2005/1970, art 48(1)-(3). A person acting in contravention of art 48 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

8 Air Navigation Order 2005, SI 2005/1970, art 48(5). See also art 48(8)(a).

9 For the categories of approach and landing see the Air Navigation Order 2005, SI 2005/1970, art 48(4), (8) (b)-(d).

10 As to the meaning of 'runway visual range' see PARA 512 note 8.

11 Air Navigation Order 2005, SI 2005/1970, art 48(4).

12 Air Navigation Order 2005, SI 2005/1970, art 48(6).

13 As to the meaning of 'decision height' see PARA 512 note 9.

- 14 As to the meaning of 'minimum descent height' see PARA 512 note 10.
- 15 Air Navigation Order 2005, SI 2005/1970, art 48(7).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(2) DUTIES BEFORE FLIGHT/(ii) Public Transport Aircraft/D. MINIMUM WEATHER CONDITIONS/516. Non-public transport aircraft.

516. Non-public transport aircraft.

An aircraft which is not a public transport aircraft¹ must not conduct certain categories of approach or landing² or take off when the relevant runway visual range³ is less than 150 metres, otherwise than under and in accordance with an approval granted in conformity with the law of the country in which it is registered⁴.

When making a descent at an aerodrome⁵ to a runway in respect of which there is a notified⁶ instrument approach procedure, an aircraft which is not a public transport aircraft may not descend from a height of 1,000 feet or more above the aerodrome to a height less than 1,000 feet above the aerodrome if the relevant runway visual range there is at the time less than the specified minimum for landing⁷.

Such an aircraft may not continue an approach to landing⁸ on such a runway by flying below the relevant specified decision height⁹ or descend below the specified minimum descent height¹⁰ unless, in either case, from such height the specified visual reference for landing is established and is maintained¹¹.

If, according to the available information, an aircraft which is not a public transport aircraft would, as regards any particular flight, be required¹² to be flown in accordance with the instrument flight rules¹³ at the aerodrome of intended landing, the commander¹⁴ of the aircraft must, prior to take-off, select an alternate aerodrome unless no aerodrome suitable for that purpose is available¹⁵. A flight to be conducted in accordance with the instrument flight rules to an aerodrome when no suitable alternate aerodrome is available must not be commenced unless a designated¹⁶ instrument approach procedure is available for the aerodrome of intended landing and available current meteorological information indicates that visual meteorological conditions will exist at the aerodrome of intended landing from two hours before to two hours after the estimated time of arrival¹⁷. A flight must not be continued towards the aerodrome of intended landing unless the latest available information indicates that conditions at that aerodrome, or at at least one alternate aerodrome, will, at the estimated time of arrival, be at or above the specified aerodrome operating minima¹⁸.

1 As to the meaning of 'public transport aircraft' see PARA 363.

2 For the categories of approach or landing see the Air Navigation Order 2005, SI 2005/1970, arts 48(8), 49(2)(a), (8).

3 As to the meaning of 'runway visual range' see PARA 512 note 8.

4 Air Navigation Order 2005, SI 2005/1970, art 49(1), (2). In the case of an aircraft registered in the United Kingdom, this approval must be issued, in writing, by the Civil Aviation Authority ('CAA'): art 49(3). As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq. As to the CAA see PARA 50 et seq.

A person acting in contravention of art 49 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 As to the meaning of 'aerodrome' see PARA 175.

6 As to the meaning of 'notified' see PARA 178 note 6.

7 Air Navigation Order 2005, SI 2005/1970, art 49(4). This is expressed to be without prejudice to the provisions of art 49(2) (see the text to notes 1-4). 'Specified' in relation to aerodrome operating minima means

such particulars of aerodrome operating minima as have been notified in respect of the aerodrome or if the relevant minima have not been notified such minima as are ascertainable by reference to the notified method for calculating aerodrome operating minima: art 49(7).

8 As to the meaning of 'approach to landing' see PARA 513 note 14.

9 As to the meaning of 'decision height' see PARA 512 note 9.

10 As to the meaning of 'minimum descent height' see PARA 512 note 10.

11 Air Navigation Order 2005, SI 2005/1970, art 49(5). This is expressed to be without prejudice to the provisions of art 49(2) (see the text to notes 1-4).

12 Is required by the Rules of the Air Regulations 2007, SI 2007/734.

13 As to the instrument flight rules see PARAS 552-557.

14 As to the meaning of 'commander' see PARA 456.

15 Air Navigation Order 2005, SI 2005/1970, art 49(6); Interpretation Act 1978 s 17(2). As to alternative aerodromes see PARA 514.

16 'Designated' in relation to an instrument approach procedure means notified, prescribed or otherwise designated by the relevant competent authority: Air Navigation Order 2005, SI 2005/1970, art 49(8A) (added by SI 2007/274). As to the meaning of 'competent authority' see PARA 415 note 9.

17 Air Navigation Order 2005, SI 2005/1970, art 49(6A) (added by SI 2007/274).

18 Air Navigation Order 2005, SI 2005/1970, art 49(6B) (added by SI 2007/274).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(i) Commander's Duties/517. Weather reports and forecasts.

(3) MOVEMENT OF AIRCRAFT

(i) Commander's Duties

517. Weather reports and forecasts.

The commander¹ of an aircraft has a duty to examine, immediately before the aircraft flies, the current reports and forecasts of the weather conditions on the proposed flight path to determine whether instrument meteorological conditions² prevail or are likely to prevail during any part of the flight³.

1 As to the meaning of 'commander' see PARA 456.

2 As to the meaning of 'instrument meteorological conditions' see PARA 548 note 2.

3 See the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 7(1), (2). See further PARA 548.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(i) Commander's Duties/518. Pilots remaining at controls.

518. Pilots remaining at controls.

The commander¹ of an aircraft registered in the United Kingdom² must cause one pilot to remain at the controls at all times while the aircraft is in flight³.

Where the aircraft is required to carry two pilots⁴, the commander must cause both pilots to remain at the controls during take off and landing⁵; and, if it carries two or more pilots, whether or not it is required to do so, and is engaged on a flight for the purpose of the public transport⁶ of passengers, the commander must himself remain at the controls during take-off and landing⁷.

An operator must not permit a helicopter rotor to be turned under power for the purpose of making a flight unless there is a person at the controls entitled⁸ to act as pilot-in-command of the helicopter⁹.

1 As to the meaning of 'commander' see PARA 456.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 50(1). Each pilot at the controls must be secured in his seat by either a safety belt with or without one diagonal shoulder strap or a safety harness; and a safety harness must be worn at take-off and landing if it is required by art 19, Sch 4 (see PARA 410) to be provided: art 40(4).

A person acting in contravention of art 50 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

4 For the requirement to carry two pilots see PARA 458.

5 Air Navigation Order 2005, SI 2005/1970, art 50(2).

6 As to public transport see PARA 363.

7 Air Navigation Order 2005, SI 2005/1970, art 50(3).

8 In accordance with the Air Navigation Order 2005, SI 2005/1970, art 26.

9 Air Navigation Order 2005, SI 2005/1970, art 50(5) (added by SI 2007/274).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(i) Commander's Duties/519. Wearing of survival suits.

519. Wearing of survival suits.

Each member of the crew¹ of an aircraft registered in the United Kingdom² must wear a survival suit where it is required to be worn³. This does not apply to any member of the crew of any aircraft flying under and in accordance with the terms of a police air operator's certificate⁴.

1 As to the meaning of 'crew' see PARA 456.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 51(1). As to the requirement to wear a survival suit see art 19(2), Sch 4 paras 5(15)(ee), 6 Scale I; and PARA 410. A person acting in contravention of art 51 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: art 148(4). As to the standard scale see PARA 50 note 8.

4 Air Navigation Order 2005, SI 2005/1970, art 51(2). As to police air operators' certificates see PARAS 99-100.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(i) Commander's Duties/520. Commander's authority.

520. Commander's authority.

Every person in an aircraft must obey all lawful commands which the commander¹ of that aircraft may give for the purpose of securing the safety of the aircraft and of persons or property carried in it, or for the safety, efficiency or regularity of air navigation².

1 As to the meaning of 'commander' see PARA 456.

2 Air Navigation Order 2005, SI 2005/1970, art 77. A person acting in contravention of art 77 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. As to crimes committed on board aircraft see PARA 620 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(ii) Aircraft Radio Stations/521. Compliance with aircraft radio station licence.

(ii) Aircraft Radio Stations

521. Compliance with aircraft radio station licence.

The radio station in an aircraft must not be operated, whether or not the aircraft is in flight, except in accordance with the conditions of the licence issued in respect of that station under the law of the country in which the aircraft is registered¹ or the state of the operator², and by a person duly licensed or otherwise permitted to operate the radio station under that law³.

1 As to the registration of aircraft see PARA 367 et seq.

2 As to the meaning of 'operator' see PARA 437. As to the meaning of 'state of the operator' see PARA 376 note 4.

3 Air Navigation Order 2005, SI 2005/1970, art 55(1). A person acting in contravention of art 55 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8. As to the prohibition of broadcasting from aircraft see the Wireless Telegraphy Act 2006 Pt 5 (ss 77-95); and **TELECOMMUNICATIONS AND BROADCASTING**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(ii) Aircraft Radio Stations/522. Radio watch.

522. Radio watch.

Where an aircraft is required to be equipped with radio communication apparatus¹, a member of the flight crew² must maintain a continuous radio watch, whenever the aircraft is in flight, by listening to the signals transmitted upon the frequency notified³ or designated by a message received from an appropriate aeronautical radio station⁴ for use by that aircraft⁵.

However, the radio watch may be discontinued or continued on another frequency when such a message so permits⁶; and the watch may be kept by a device installed in the aircraft if the appropriate aeronautical radio station has been informed and has raised no objection, and if that station is notified or, in the case of a station in a country other than the United Kingdom, otherwise designated as transmitting a signal suitable for that purpose⁷.

1 As to the radio equipment to be carried see PARA 418.

2 As to the meaning of 'flight crew' see PARA 456.

3 As to the meaning of 'notified' see PARA 178 note 6.

4 As to the meaning of 'appropriate aeronautical radio station' see PARA 505 note 8.

5 Air Navigation Order 2005, SI 2005/1970, art 55(2). A person acting in contravention of art 55 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

6 Air Navigation Order 2005, SI 2005/1970, art 55(3)(a).

7 Air Navigation Order 2005, SI 2005/1970, art 55(3)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(ii) Aircraft Radio Stations/523. Operation of radio in aircraft.

523. Operation of radio in aircraft.

Where an aircraft is required to be equipped with radio communication or radio navigation equipment¹, a member of the flight crew² must operate that equipment as instructed by the appropriate air traffic control unit³ or as notified⁴ in relation to any notified airspace in which the aircraft is flying⁵.

The radio station in an aircraft must not be operated so as to cause interference which impairs the efficiency of aeronautical telecommunications or navigational services⁶. Emissions must be restricted to (1) those of the class and frequency for the time being in use, in accordance with general international aeronautical practice, in the airspace in which the aircraft is flying⁷; (2) distress, urgency and safety messages and signals, and messages and signals relating to the flight of the aircraft, in each case in accordance with general international aeronautical practice⁸; and (3) such public correspondence messages as may be permitted by or under the aircraft radio station licence⁹.

Where a flying machine registered in the United Kingdom¹⁰ is engaged on a flight for the purpose of public transport¹¹, the pilot and the flight engineer (if any) may not use a hand-held microphone while the aircraft is flying in controlled airspace¹² below flight level¹³ 150 or is taking off or landing¹⁴.

1 As to the radio equipment to be carried see PARA 418.

2 As to the meaning of 'flight crew' see PARA 456.

3 'Appropriate air traffic control unit' means in relation to an aircraft either the air traffic control unit serving the area in which the aircraft is for the time being or the air traffic control unit serving the area which the aircraft intends to enter and with which unit the aircraft is required to communicate prior to entering that area, as the context requires: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'air traffic control unit' see PARA 164 note 3.

4 As to the meaning of 'notified' see PARA 178 note 6.

5 Air Navigation Order 2005, SI 2005/1970, art 55(4). A person acting in contravention of art 55 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

6 Air Navigation Order 2005, SI 2005/1970, art 55(5).

7 Air Navigation Order 2005, SI 2005/1970, art 55(5)(a).

8 Air Navigation Order 2005, SI 2005/1970, art 55(5)(b), (c).

9 Air Navigation Order 2005, SI 2005/1970, art 55(5)(d). As to the licence see PARA 521.

10 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

11 As to public transport see PARA 363.

12 As to the meaning of 'controlled airspace' see PARA 547.

13 As to the meaning of 'flight level' see PARA 415 note 18.

14 Air Navigation Order 2005, SI 2005/1970, art 55(6).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iii) General Safety Provisions/524. Dangerous flying and similar acts.

(iii) General Safety Provisions

524. Dangerous flying and similar acts.

Where an aircraft is flown in such a manner as to be the cause of unnecessary danger to any person or property on land or water, the pilot or the person in charge of the aircraft, and also its owner¹, unless he proves to the satisfaction of the court that the aircraft was so flown without his actual fault or privity, is guilty of an offence².

Further, a person may not recklessly or negligently act in a manner likely³ to endanger an aircraft or any person in it⁴, or cause or permit an aircraft to endanger any person or property⁵.

There is power under the Air Navigation Order 2005⁶ to direct that an aircraft is not to fly if it appears that it is intended or likely to be flown so as to be a cause of danger to any person or property, whether or not in the aircraft⁷.

1 'Owner' includes any person by whom the aircraft is hired at the time of the offence: Civil Aviation Act 1982 s 81(2).

2 Civil Aviation Act 1982 s 81(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding six months or to both: s 81(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 50 note 8. See *Civil Aviation Department v MacKenzie* [1983] NZLR 78, 2 S & B Av R VII/1, CA (where a total absence of fault was held to be a defence in respect of a New Zealand statute with similar wording).

The provisions of the Civil Aviation Act 1982 s 81 are in addition to and not in derogation of the powers conferred by s 60 (see PARA 353) to make Orders in Council for the regulation of flying and the imposition of penalties: s 81(3).

3 Ie where there is a real risk that should not be ignored: *R v Whitehouse* [2000] Crim LR 172, (1999) Times, 10 December, CA.

4 Air Navigation Order 2005, SI 2005/1970, art 73. A person acting in contravention of arts 73, 74 (see the text to note 5) is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12. As to crimes committed on board aircraft see PARA 620 et seq.

5 Air Navigation Order 2005, SI 2005/1970, art 74. For the penalty for contravention see note 4. As to dropping things from aircraft see PARAS 538-539.

6 Ie the Air Navigation Order 2005, SI 2005/1970.

7 See the Air Navigation Order 2005, SI 2005/1970, art 144(1)(b); and PARA 528.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iii) General Safety Provisions/525. Smoking or drunkenness in aircraft.

525. Smoking or drunkenness in aircraft.

Notices indicating when smoking is prohibited must be exhibited in every aircraft registered in the United Kingdom¹ so as to be visible from each passenger seat². A person may not smoke in any compartment of such an aircraft at a time when smoking is prohibited in that compartment by a notice exhibited by or on behalf of the commander³.

No one may enter or be in any aircraft when drunk⁴, nor may any person, while acting as a member of the crew⁵ or being carried in an aircraft for the purpose of so acting, be under the influence of drink or a drug to such an extent as to impair his capacity so to act⁶.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

2 Air Navigation Order 2005, SI 2005/1970, art 76(1). A person acting in contravention of art 76 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

3 Air Navigation Order 2005, SI 2005/1970, art 76(2). See note 2. As to the meaning of 'commander' see PARA 456.

4 Air Navigation Order 2005, SI 2005/1970, art 75(1). A person is drunk when he has taken alcohol to an extent which affects his steady self-control: *R v Tagg* [2001] EWCA Crim 1230, [2002] 1 Cr App Rep 22. See also *R v Cooper* [2003] EWCA Crim 3277, [2004] 2 Cr App Rep (S) 82 (defendant's conduct had not threatened safety of aircraft while in air; custodial sentence unjustified).

A person acting in contravention of the Air Navigation Order 2005, SI 2005/1970, art 75 is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12. As to sentencing under this provision see eg *R v Mullaly* [1997] 2 Cr App Rep (S) 343, CA; *R v Ayodeji* [2000] All ER (D) 1186, CA (voluntary intoxication in order to alleviate symptoms of schizophrenia; sentence of eight months' imprisonment not excessive).

5 As to the meaning of 'crew' see PARA 456.

6 Air Navigation Order 2005, SI 2005/1970, art 75(2). See note 4. For offences relating to alcohol and drugs see the Railways and Transport Safety Act 2003 Pt 5 (ss 92-102); and PARA 633 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iii) General Safety Provisions/526. Acting in a disruptive manner; intentional interference.

526. Acting in a disruptive manner; intentional interference.

No person may while in an aircraft (1) use any threatening, abusive or insulting words towards a member of the crew¹ of the aircraft²; (2) behave in a threatening, abusive, insulting or disorderly manner towards a member of the crew of the aircraft³; or (3) intentionally interfere with the performance by a member of the crew of the aircraft of his duties⁴.

1 As to the meaning of 'crew' see PARA 456.

2 Air Navigation Order 2005, SI 2005/1970, art 78(a). A person acting in contravention of art 78(a), (b) (see heads (1) and (2) in the text) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

3 Air Navigation Order 2005, SI 2005/1970, art 78(b). See note 2.

4 Air Navigation Order 2005, SI 2005/1970, art 78(c). A person acting in contravention of art 78(c) is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iii) General Safety Provisions/527. Access to parts of aircraft during flight.

527. Access to parts of aircraft during flight.

A person must not be in or on any part of an aircraft in flight¹ which is not a part designed for the accommodation of persons, and, in particular, a person must not be on the wings or undercarriage of the aircraft². However, a person may have temporary access to any part of the aircraft for the purpose of taking action necessary for the safety of the aircraft or of any person, animal or goods in it; or to any part of the aircraft in which cargo or stores are carried and which is designed to enable a person to have access to it during flight³.

Further, a person must not be in or on any object, other than a glider⁴ or flying machine⁵, towed by or attached to an aircraft in flight⁶.

1 As to the meaning of 'in flight' see PARA 530.

2 Air Navigation Order 2005, SI 2005/1970, art 71(1)(a). A person acting in contravention of art 71 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

The provisions of art 71 do not apply to a passenger in a helicopter flying under and in accordance with a police air operator's certificate, who is disembarking in accordance with a procedure contained in the police operations manual for the helicopter: art 71(3). As to police air operators' certificates see PARAS 99-100.

3 Air Navigation Order 2005, SI 2005/1970, art 71(2).

4 As to the meaning of 'glider' see PARA 360 note 6.

5 As to the meaning of 'flying machine' see PARA 303 note 2.

6 Air Navigation Order 2005, SI 2005/1970, art 71(1)(b). See note 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iii) General Safety Provisions/528. Power to prevent flight.

528. Power to prevent flight.

If it appears to the Civil Aviation Authority ('CAA')¹ or to any authorised person² that an aircraft is intended or likely to be flown in such circumstances that the flight would be in contravention of specified provisions of the Air Navigation Order 2005³, the CAA or authorised person may direct the operator⁴ or the commander⁵ of the aircraft that he is not to permit the aircraft to make the particular flight or any other flight of a description specified in the direction until the CAA or authorised person has revoked the direction⁶. The CAA or authorised person may enter upon and inspect any aircraft for this purpose⁷ and may take such steps as are necessary to detain the aircraft⁸. The CAA or authorised person may take the same action where it appears that an aircraft may be flown in contravention of the requirements for a noise certificate⁹.

A similar direction may be given or similar steps taken where it appears to the CAA or to any authorised person that an aircraft is intended or likely to be flown: (1) in such circumstances that the flight would be in contravention of any other provision of the Air Navigation Order 2005 or any regulations made under it or of Part 21, 145 or M¹⁰ and would be a cause of danger to any person or property whether or not in the aircraft¹¹; or (2) while in a condition unfit for the flight, whether or not the flight would otherwise be in contravention of any provision of the Air Navigation Order 2005 or of any regulations made under it or of Part 21, 145 or M¹².

Finally, if it appears to the Secretary of State¹³ or any authorised person¹⁴ that an aircraft is intended or likely to be flown in contravention of the provisions of the Air Navigation Order 2005 which restrict the use of aircraft registered outside the United Kingdom¹⁵ for carriage for valuable consideration¹⁶, the provisions in respect of aerial photography and survey¹⁷, or the provisions relating to flights over any foreign country by aircraft registered in the United Kingdom¹⁸, the Secretary of State or that person may direct the operator or commander of the aircraft that he is not to permit the aircraft to make the particular flight or any other flight of a description specified in the direction until the direction has been revoked¹⁹. The Secretary of State or any authorised person may take such steps as are necessary to detain the aircraft and, for these purposes, he or any authorised person may enter upon any aerodrome or aircraft²⁰. Intentionally obstructing or impeding a person acting in the exercise of these powers is an offence²¹.

1 As to the CAA see PARA 50 et seq.

2 For these purposes, 'authorised person' means any constable and any person authorised by the CAA whether by name, class or description, either generally or in relation to a particular case or class of case: Air Navigation Order 2005, SI 2005/1970, art 155(1).

3 Air Navigation Order 2005, SI 2005/1970, art 144(1)(a). The provisions specified are: art 3 (requirement for aircraft to be registered: see PARA 367), art 5 (nationality and registration mark: see PARA 374), art 6 (issue of air operator's certificates: see PARA 99), art 8 (requirement for certificates of airworthiness to be in force: see PARA 376), art 25 (composition of crew: see PARA 456 et seq), art 26 (licences of members of flight crew: see PARA 439), art 43 (operator's responsibilities in respect of loading public transport aircraft: see PARA 502), art 62 (use of flight recording systems and preservation of records: see PARA 482), art 69 (carriage of munitions of war), art 70 (carriage of dangerous goods: see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 193) and art 75(2) (crew member being under the influence of drink or a drug) (see PARA 525).

4 As to the meaning of 'operator' see PARA 437.

5 As to the meaning of 'commander' see PARA 456.

- 6 Air Navigation Order 2005, SI 2005/1970, art 144(1)(a). Failure to comply with a direction is an offence: see arts 147, 148, Sch 14. A person acting in contravention of art 144 is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.
- 7 Air Navigation Order 2005, SI 2005/1970, art 144(2).
- 8 Air Navigation Order 2005, SI 2005/1970, art 144(1). For other powers of detention see PARA 436.
- 9 See the Aeroplane Noise Regulations 1999, SI 1999/1452, reg 28; the Air Navigation (Environmental Standards) Order 2002, SI 2002/798, art 18; and PARA 404.
- 10 As to the meaning of 'Part 21', 'Part 145' and 'Part M' see PARA 412 note 2.
- 11 Air Navigation Order 2005, SI 2005/1970, art 144(1)(b). See note 6.
- 12 Air Navigation Order 2005, SI 2005/1970, art 144(1)(c). See note 6. For other powers to prevent flight see PARAS 404, 427.
- 13 As to the Secretary of State see PARA 33.
- 14 For the purposes of the Air Navigation Order 2005, SI 2005/1970, art 144(3), (4), 'authorised person' means any constable and any person authorised by the Secretary of State, whether by name or by class or description either generally or in relation to a particular case or class of cases: art 155(1).
- 15 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.
- 16 See the Air Navigation Order 2005, SI 2005/1970, art 138; and PARA 363.
- 17 See the Air Navigation Order 2005, SI 2005/1970, art 140; and PARA 542.
- 18 See the Air Navigation Order 2005, SI 2005/1970, art 141; and PARA 543.
- 19 Air Navigation Order 2005, SI 2005/1970, art 144(3). See note 6.
- 20 Air Navigation Order 2005, SI 2005/1970, art 144(3), (4).
- 21 Air Navigation Order 2005, SI 2005/1970, art 146. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

UPDATE

528 Power to prevent flight

NOTE 9--SI 2002/798 art 18 now Air Navigation (Environmental Standards for Non-EASA Aircraft) Order 2008, SI 2008/3133, art 24.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iii) General Safety Provisions/529. Power to prevent flight of third country aircraft.

529. Power to prevent flight of third country aircraft.

Where it appears to an authorised person¹ that a third-country aircraft² has a safety deficiency and does not comply with international safety standards, would obviously be hazardous to flight safety and is intended or is likely to be flown without completion by the operator³ of the appropriate corrective action, that authorised person must give to the person appearing to be in command of the aircraft a direction in writing that he must not permit the aircraft to take off until further notice and take such steps as may be necessary to detain that aircraft⁴. An authorised person⁵ must immediately inform the competent authority of the state of the operator of the detention and, where necessary, of the state in which the aircraft is registered⁶.

Where an aircraft has been prohibited from taking off pursuant to the above provisions, then if the safety deficiency affects the validity of the certificate of airworthiness⁷ of the aircraft and the Civil Aviation Authority ('CAA')⁸ has granted the operator of the aircraft an exemption from the requirement that the aircraft have a valid certificate of airworthiness, an authorised person must not revoke a direction that the aircraft is not to take off unless he is satisfied that the operator has obtained permission for the flight from all states over which it is intended to fly the aircraft⁹.

1 For these purposes, 'authorised person' means any person authorised by the Secretary of State pursuant to the Civil Aviation (Safety of Third-Country Aircraft) Regulations 2006, SI 2006/1384, reg 5: Air Navigation Order 2005, SI 2005/1970, art 155(1) (definition added by SI 2006/1384). As to the Secretary of State see PARA 33.

2 'Third-country aircraft' means any aircraft, other than a state aircraft, which is not used or operated under the control of the competent authority of a member state: Air Navigation Order 2005, SI 2005/1970, art 155(1) (definition added by SI 2006/1384). 'State aircraft' means an aircraft engaged in military, customs, police or similar services: art 155(1). As to the meaning of 'competent authority' see PARA 415 note 9.

3 As to the meaning of 'operator' see PARA 437.

4 Air Navigation Order 2005, SI 2005/1970, art 144A (added by SI 2006/1384).

5 As to the meaning of 'authorised person' for these purposes see PARA 528 note 2.

6 Air Navigation Order 2005, SI 2005/1970, art 144B (added by SI 2006/1384).

7 As to certificates of airworthiness see PARAS 376-384.

8 As to the CAA see PARA 50 et seq.

9 Air Navigation Order 2005, SI 2005/1970, art 144C (added by SI 2006/1384).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/530. Meaning of 'flight'.

(iv) General Flight Rules

530. Meaning of 'flight'.

For the purposes of the Air Navigation Order 2005¹, an aircraft is deemed to be in flight:

- 412 (1) in the case of a piloted flying machine², from the moment when, after the crew³ embarks for the purpose of taking off, it first moves under its own power until the moment when it next comes to rest after landing⁴;
- 413 (2) in the case of a pilotless flying machine or a glider, from the moment when it first moves for the purpose of taking off until the moment when it next comes to rest after landing⁵;
- 414 (3) in the case of an airship, from the moment when it first becomes detached from the surface until the moment when it next becomes attached to the surface or comes to rest on it⁶;
- 415 (4) in the case of a free balloon⁷, from the moment when the balloon, including the canopy and basket, becomes separated from the surface until the moment it next comes to rest on it⁸; and
- 416 (5) in the case of a captive balloon⁹, from the moment when the balloon, including the canopy and basket, becomes separated from the surface apart from a restraining device attaching it to the surface, until the moment when it next comes to rest on it¹⁰.

The expressions 'a flight' and 'to fly' must be construed accordingly¹¹.

1 Ie the Air Navigation Order 2005, SI 2005/1970.

2 As to the classification of aircraft see PARA 360.

3 As to the meaning of 'crew' see PARA 456.

4 Air Navigation Order 2005, SI 2005/1970, art 155(1), (2)(a).

5 Air Navigation Order 2005, SI 2005/1970, art 155(1), (2)(b).

6 Air Navigation Order 2005, SI 2005/1970, art 155(1), (2)(c).

7 As to the meaning of 'free balloon' see PARA 360 note 5.

8 Air Navigation Order 2005, SI 2005/1970, art 155(1), (2)(d).

9 As to the meaning of 'captive balloon' see PARA 360 note 5.

10 Air Navigation Order 2005, SI 2005/1970, art 155(1), (2)(e).

11 Air Navigation Order 2005, SI 2005/1970, art 155(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/531. Commander's responsibility.

531. Commander's responsibility.

If any provision of the Air Navigation Order 2005¹ or of the Rules of the Air² or other regulations made under the Air Navigation Order 2005 or of Part 21, 145 or M³ is contravened in relation to an aircraft, the commander⁴ as well as the operator⁵ is, without prejudice to any other person's liability, deemed to have contravened the provision unless he proves that the contravention occurred without his consent or connivance and that he exercised all due diligence to prevent it⁶. Every person on board must obey the commander's lawful commands⁷.

It is an offence to contravene or permit the contravention of or to fail to comply with the Rules of the Air⁸ save in circumstances in which departure from those rules is lawful⁹.

1 Ie the Air Navigation Order 2005, SI 2005/1970.

2 Ie the Rules of the Air Regulations 2007, SI 2007/734: see PARA 357.

3 As to the meaning of 'Part 21', 'Part 145' and 'Part M' see PARA 412 note 2.

4 As to the meaning of 'commander' see PARA 456.

5 As to the meaning of 'operator' see PARA 437.

6 Air Navigation Order 2005, SI 2005/1970, art 148(1).

7 See the Air Navigation Order 2005, SI 2005/1970, art 77; and PARA 520.

8 See the Air Navigation Order 2005, SI 2005/1970, art 95(2); and PARA 357. A person acting in contravention of art 95 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

9 See the Air Navigation Order 2005, SI 2005/1970, art 95(3); and PARA 357.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/532. Practice flights.

532. Practice flights.

An aircraft must not be flown in simulated instrument flight conditions¹ unless the following conditions are met²:

- 417 (1) it is equipped with dual controls which are functioning properly³;
- 418 (2) an additional pilot (called a safety pilot) is carried in the second control seat for the purpose of providing assistance to the pilot flying the aircraft⁴; and
- 419 (3) if the safety pilot's field of vision is not adequate both forwards and to each side of the aircraft, a third person, who is a competent observer, occupies a position in the aircraft which from his field of vision makes good the deficiencies in that of the safety pilot, and from which he can readily communicate with the safety pilot⁵.

An aircraft must not carry out instrument approach practice in the United Kingdom⁶ if it is flying in visual meteorological conditions⁷ unless the appropriate air traffic control unit⁸ has previously been informed that the flight is to be made for this purpose and, if the flight is not being carried out in simulated instrument flight conditions, a competent observer is carried who has an adequate field of vision and can readily communicate with the pilot flying the aircraft⁹.

1 'Simulated instrument flight conditions' means a flight during which mechanical or optical devices are used in order to reduce the field of vision or the range of visibility from the cockpit of the aircraft: Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 1(j).

2 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 23(1), (2). As to the penalty for contravention of this rule see PARA 531 note 8.

3 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 23(1)(a).

4 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 23(1)(b).

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 23(1)(c).

6 As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 As to the meaning of 'visual meteorological conditions' see PARA 550 note 7.

8 As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.

9 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 24(1), (2). As to the penalty for contravention of this rule see PARA 531 note 8.

UPDATE

532 Practice flights

TEXT AND NOTES--See SI 2007/734 Sch 1 r 24A (added by SI 2009/2169), which prohibits test flying over congested areas in specified circumstances.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/533. Reporting hazardous conditions.

533. Reporting hazardous conditions.

On meeting with hazardous conditions in the course of a flight, the commander¹ of an aircraft must send to the appropriate air traffic control unit², by the quickest means available, particulars of such conditions as may be pertinent to the safety of other aircraft³. The information must be sent immediately the aircraft encounters the hazardous conditions or as soon as it is possible to do so afterwards⁴.

1 As to the meaning of 'commander' see PARA 456.

2 As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.

3 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 4(1). As to the penalty for contravention of this rule see PARA 531 note 8.

4 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 4(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/534. Flight over water.

534. Flight over water.

An aeroplane registered in the United Kingdom¹ flying under and in accordance with a permission granted by the Civil Aviation Authority ('CAA')² when flying over water for the purpose of public transport³ must fly, except as necessary for the purpose of take-off or landing, at such an altitude as would enable the aircraft to reach a place at which it may safely land at a height sufficient to enable it to do so either⁴ (1) if it has only one engine, in the event of the failure of that engine⁵; or (2) if it has more than one engine, in the event of the failure of one of those engines and with the remaining engine or engines operating within the maximum continuous power conditions specified in the aeroplane's certificate of airworthiness or flight manual⁶.

Where an aeroplane flying under and in accordance with a permission granted by the CAA is designated either by that permission or by the certificate of airworthiness as being of performance group X⁷, the aircraft may not fly over water for the purpose of public transport so as to be more than 60 minutes' flying time⁸ from the nearest shore unless it has more than two power units⁹.

A helicopter registered in the United Kingdom when flying over water for the purpose of public transport must fly, except as may be necessary for the purpose of take-off or landing, at such an altitude as would enable the helicopter to reach a place at which it can safely land at a height sufficient to enable it to do so (a) if it has one engine only, in the event of the failure of that engine; or (b) if it has more than one engine, in the event of the failure of one of those engines and with the remaining engine or engines operating within the maximum continuous power conditions specified in the certificate of airworthiness or flight manual for the helicopter¹⁰. A helicopter carrying out Performance Class 1 or Performance Class 2 operations may not fly over water for the purpose of public transport for more than a specified period unless it is equipped with flotation apparatus approved by the CAA¹¹. A helicopter carrying out Performance Class 3 operations must not fly over water for the purpose of public transport in the specified circumstances¹² unless it is equipped with the approved flotation apparatus, and when equipped with such apparatus is subject to further restrictions¹³.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

2 The CAA may grant in respect of any aeroplane a permission authorising it to comply with the applicable provisions of the Air Navigation (General) Regulations 2006, SI 2006/601, Sch 1: Air Navigation Order 2005, SI 2005/1970, art 44(5); Interpretation Act 1978 s 17(2). The applicable provisions for an aeroplane in respect of which such a permission has been granted are those provisions of the Air Navigation (General) Regulations 2006, SI 2006/601, Sch 1 applicable to an aeroplane of the performance group specified in the permission: Air Navigation Order 2005, SI 2005/1970, art 44(6). An aeroplane need not comply with art 44(1) (see PARA 500) if it is flying under and in accordance with a permission granted to the operator by the CAA under art 44(5): art 44(4). As to the CAA see PARA 50 et seq.

3 As to public transport see PARA 363.

4 Air Navigation Order 2005, SI 2005/1970, art 44(7). A person acting in contravention of art 44 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 Air Navigation Order 2005, SI 2005/1970, art 44(7)(a).

6 Air Navigation Order 2005, SI 2005/1970, art 44(7)(b). As to certificates of airworthiness see PARAS 376-384. As to the meaning of 'flight manual' see PARA 376 note 8. As to the training required for the pilot in command of an aircraft landing on or taking off from water see PARA 455.

7 As to performance groups see PARA 501.

8 For this purpose, flying time is to be calculated at normal cruising speed with one power unit inoperative: Air Navigation Order 2005, SI 2005/1970, art 44(9).

9 Air Navigation Order 2005, SI 2005/1970, art 44(8).

10 See the Air Navigation Order 2005, SI 2005/1970, art 45(4).

11 See the Air Navigation Order 2005, SI 2005/1970, art 45(7), (9)(b).

12 'Specified circumstances' means circumstances in which a helicopter is more than 20 seconds' flying time from a point from which it can make an autorotative descent to land suitable for an emergency landing: Air Navigation Order 2005, SI 2005/1970, art 45(9)(c).

13 See the Air Navigation Order 2005, SI 2005/1970, art 45(5), (6).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/535. Towing of gliders.

535. Towing of gliders.

An aircraft in flight must not tow a glider¹ unless the flight manual² for the towing aircraft includes an express provision that it may be used for that purpose³. The length of the combination of towing aircraft, tow rope and glider in flight must not exceed 150 metres⁴.

A self-sustaining glider⁵ must not take off under its own power⁶.

1 As to the meaning of 'glider' see PARA 360 note 6.

2 As to the meaning of 'flight manual' see PARA 376 note 8.

3 Air Navigation Order 2005, SI 2005/1970, art 63(1). A person acting in contravention of art 63 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

As to the precautions to be taken by the commander of the towing aircraft before take off see PARA 499.

4 Air Navigation Order 2005, SI 2005/1970, art 63(2). See note 3.

5 'Self-sustaining glider' means an aircraft with the characteristics of a non-power-driven glider which is fitted with one or more power units capable of sustaining the aircraft in flight but which is not designed or intended to take off under its own power: Air Navigation Order 2005, SI 2005/1970, art 155(1).

6 Air Navigation Order 2005, SI 2005/1970, art 64.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/536. Towing of other articles.

536. Towing of other articles.

An aircraft in flight must not, by means external to the aircraft, tow any article other than a glider¹ unless the certificate of airworthiness² of that aircraft issued or rendered valid under the law of the country in which it is registered³, or the flight manual⁴ for the aircraft, includes an express provision that it may be used for that purpose⁵.

An aircraft in flight must not tow any article, other than a glider, at night or when flight visibility⁶ is less than one nautical mile⁷. The length of the combination of towing aircraft, tow rope and article in tow must not exceed 150 metres⁸.

An aircraft in flight may, however, tow in a reasonable manner any radio aerial, any instrument being used for experimental purposes, or any signal, apparatus or article required or permitted by or under the Air Navigation Order 2005 to be towed or displayed by an aircraft in flight⁹.

1 As to the towing of gliders see PARA 535. As to the meaning of 'glider' see PARA 360 note 6.

2 As to certificates of airworthiness see PARAS 376-384.

3 As to the registration of aircraft see PARA 367 et seq.

4 As to the meaning of 'flight manual' see PARA 376 note 8.

5 Air Navigation Order 2005, SI 2005/1970, art 65(1). A person acting in contravention of art 65 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

The provisions of art 65 do not apply to aircraft flying in accordance with the 'B' conditions (see PARA 379) and do not permit the towing of gliders otherwise than in accordance with art 65: art 65(7)(c), (d).

6 As to the meaning of 'flight visibility' see PARA 551 note 3.

7 Air Navigation Order 2005, SI 2005/1970, art 65(3). See note 5. As to the meaning of 'nautical mile' see PARA 459 note 4.

8 Air Navigation Order 2005, SI 2005/1970, art 65(4). See note 5.

9 Air Navigation Order 2005, SI 2005/1970, art 65(7)(a).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/537. Picking up persons and articles.

537. Picking up persons and articles.

An aircraft in flight must not pick up or raise any person, animal or article unless the certificate of airworthiness¹ issued or rendered valid in respect of that aircraft under the law of the country in which it is registered², or the flight manual³ for the aircraft, includes an express provision that the aircraft may be used for that purpose⁴; nor may it launch or pick up tow ropes, banners or similar articles otherwise than at an aerodrome⁵. A helicopter must not fly at any height over a congested area⁶ of a city, town or settlement at any time when an article, person or animal is suspended from the helicopter⁷.

The provisions described above do not, however, prohibit the picking up or raising of any person, animal or article in an emergency or for the purpose of saving life⁸, and do not apply to any aircraft flying in accordance with the 'B' conditions⁹.

1 As to certificates of airworthiness see PARAS 376-384.

2 As to the registration of aircraft see PARA 367 et seq.

3 As to the meaning of 'flight manual' see PARA 376 note 8.

4 Air Navigation Order 2005, SI 2005/1970, art 65(1). A person acting in contravention of art 65 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 Air Navigation Order 2005, SI 2005/1970, art 65(2). See note 4. As to the launching and picking up of tow ropes, etc at aerodromes see the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 44.

6 As to the meaning of 'congested area' see PARA 378 note 25.

7 Air Navigation Order 2005, SI 2005/1970, art 65(5). Unless he has duties to perform in connection with the person, article or animal to be picked up by, or lowered from, the helicopter, or unless he is a passenger who has been picked up or raised by means external to the helicopter or a passenger who it is intended is to be lowered to the surface by such means, no passenger may be carried in the helicopter when such a person, article or animal is suspended from it: art 65(6). See note 4. As to the use of helicopters see also PARA 538.

8 Air Navigation Order 2005, SI 2005/1970, art 65(7)(b).

9 Air Navigation Order 2005, SI 2005/1970, art 65(7)(c). As to the 'B' conditions see PARA 379.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/538. Dropping of articles and animals.

538. Dropping of articles and animals.

Articles and animals, whether or not attached to a parachute, must not be dropped¹ or permitted to drop from an aircraft so as to endanger persons or property²; and articles and animals, whether or not attached to a parachute, must not be dropped or permitted to drop to the surface from an aircraft flying over the United Kingdom³ except under and in accordance with the terms of an aerial application certificate⁴.

These prohibitions do not, however, apply to the dropping of articles by or with the authority of the commander⁵ of the aircraft in the following circumstances⁶:

- 420 (1) the dropping of articles for the purpose of saving life⁷;
- 421 (2) the jettisoning of fuel or other articles in case of emergency⁸;
- 422 (3) the dropping of ballast in the form of fine sand or water⁹;
- 423 (4) the dropping of articles solely for the purpose of navigating the aircraft in accordance with ordinary practice or with the provisions of the Air Navigation Order 2005¹⁰;
- 424 (5) the dropping at an aerodrome of tow ropes, banners or similar articles towed by aircraft¹¹;
- 425 (6) the dropping of articles for the purpose of public health or as a measure against weather conditions, surface icing or oil pollution (or training for dropping for such purposes), if this is done with the permission of the Civil Aviation Authority ('CAA')¹²; and
- 426 (7) the dropping of wind drift indicators for the purpose of enabling parachute descents, if this is done with the permission of the CAA¹³.

In addition, the prohibitions do not apply to the lowering of any animal or article from a helicopter to the surface, if the certificate of airworthiness¹⁴ of that helicopter issued or rendered valid under the law of the country in which it is registered¹⁵, or the flight manual¹⁶, includes an express provision that it may be used for that purpose¹⁷.

1 'Dropping' includes projecting and lowering: Air Navigation Order 2005, SI 2005/1970, art 66(4).

2 Air Navigation Order 2005, SI 2005/1970, art 66(1). Corresponding provision is also made in respect of small aircraft: see art 98(1). As to the meaning of 'small aircraft' see PARA 353 note 20.

A person acting in contravention of arts 66, 98 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 Air Navigation Order 2005, SI 2005/1970, art 66(2). See note 2. As to aerial application certificates see PARA 540.

5 As to the meaning of 'commander' see PARA 456.

6 Air Navigation Order 2005, SI 2005/1970, art 66(3).

7 Air Navigation Order 2005, SI 2005/1970, art 66(3)(a).

8 Air Navigation Order 2005, SI 2005/1970, art 66(3)(b).

- 9 Air Navigation Order 2005, SI 2005/1970, art 66(3)(c).
- 10 Air Navigation Order 2005, SI 2005/1970, art 66(3)(d).
- 11 Air Navigation Order 2005, SI 2005/1970, art 66(3)(e). As to the dropping of tow ropes, banners, etc see the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 44.
- 12 Air Navigation Order 2005, SI 2005/1970, art 66(3)(f). As to the CAA see PARA 50 et seq.
- 13 Air Navigation Order 2005, SI 2005/1970, art 66(3)(g).
- 14 As to certificates of airworthiness see PARAS 376-384.
- 15 As to the registration of aircraft see PARA 367 et seq.
- 16 As to the meaning of 'flight manual' see PARA 376 note 8.
- 17 Air Navigation Order 2005, SI 2005/1970, art 66(5). See also PARA 537 text to notes 6-7.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/539. Dropping of persons.

539. Dropping of persons.

A person must not drop¹, be dropped or be permitted to drop to the surface or jump from an aircraft flying over the United Kingdom² except under and in accordance with either a police air operator's certificate³ or a parachuting permission granted by the Civil Aviation Authority ('CAA')⁴; and notwithstanding the grant of such a certificate or permission a person must not drop, be dropped or be permitted to drop from an aircraft in flight so as to endanger persons or property⁵.

An aircraft must not be used for the purpose of dropping persons unless (1) there is a certificate of airworthiness⁶ issued or rendered valid in respect of that aircraft under the law of the country in which the aircraft is registered⁷ and that certificate or the flight manual⁸ for the aircraft includes an express provision that it may be used for that purpose, and the aircraft is operated in accordance with the written permission granted by the CAA; or (2) the aircraft is operated under and in accordance with the terms of a police air operator's certificate⁹.

When requested, every applicant for, and every holder of, a parachuting permission must make available a parachuting manual to the CAA and make any amendments or additions to it as the CAA may require¹⁰. The holder of the parachuting manual must make it available to every employee or person who may engage in parachuting activities conducted by him¹¹, and must contain all information and instructions necessary to enable such employees or persons to perform their duties¹².

The prohibitions as to the dropping of persons do not apply to the descent of persons by parachute from an aircraft in an emergency¹³, nor to the lowering of any person in an emergency or for the purpose of saving life¹⁴. Furthermore, they do not prohibit the lowering of any person from a helicopter to the surface, if the certificate of airworthiness of that helicopter issued or rendered valid under the law of the country in which it is registered, or the flight manual, includes an express provision that it may be used for that purpose¹⁵.

1 'Dropping' includes projecting and lowering: Air Navigation Order 2005, SI 2005/1970, art 67(2).

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 As to police air operators' certificates see PARAS 99-100.

4 Air Navigation Order 2005, SI 2005/1970, art 67(1). As to the CAA see PARA 50 et seq. A person acting in contravention of art 67 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 Air Navigation Order 2005, SI 2005/1970, art 67(3). See note 4.

6 As to certificates of airworthiness see PARAS 376-384.

7 As to the registration of aircraft see PARA 367 et seq.

8 As to the meaning of 'flight manual' see PARA 376 note 8.

9 Air Navigation Order 2005, SI 2005/1970, art 67(4).

10 Air Navigation Order 2005, SI 2005/1970, art 67(5).

11 Air Navigation Order 2005, SI 2005/1970, art 67(6).

12 Air Navigation Order 2005, SI 2005/1970, art 67(7).

- 13 Air Navigation Order 2005, SI 2005/1970, art 67(8).
- 14 Air Navigation Order 2005, SI 2005/1970, art 67(9).
- 15 Air Navigation Order 2005, SI 2005/1970, art 67(10).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/540. Aerial application certificates.

540. Aerial application certificates.

An aircraft must not be used for the dropping of articles¹ for the purposes of agriculture, horticulture or forestry², or for training for the dropping of articles for any such purposes, otherwise than under and in accordance with the terms of an aerial application certificate granted to the operator³ by the Civil Aviation Authority ('CAA')⁴.

An aerial application certificate is granted to an applicant where the CAA is satisfied that the applicant is a fit person to hold such a certificate and is competent to secure the safe operation of the aircraft on flights to drop articles for agricultural, horticultural or forestry purposes, having regard to his previous conduct and experience, his equipment, organisation, staffing and other arrangements⁵. The certificate may include such conditions as the CAA thinks fit including conditions to ensure that neither the aircraft nor any article dropped from it endangers persons or property in the aircraft or elsewhere⁶.

Every applicant for and holder of an aerial application certificate must make available to the CAA upon application and to every member of his operating staff⁷ upon the certificate being granted, an aerial application manual⁸; it must contain all such information and instructions as may be necessary to enable the operating staff to perform their duties⁹; and the holder of an aerial application certificate must make such amendments or additions to the manual as the CAA may require¹⁰.

1 As to the dropping of articles generally see PARA 538.

2 Until 1985, control over crop-spraying operations was exercised on an ad hoc basis by the grant of conditional exemptions under the then current air navigation order: see PARA 353.

3 As to the meaning of 'operator' see PARA 437.

4 Air Navigation Order 2005, SI 2005/1970, art 68(1). As to the CAA see PARA 50 et seq. A person acting in contravention of art 68 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

5 Air Navigation Order 2005, SI 2005/1970, art 68(2)(a).

6 Air Navigation Order 2005, SI 2005/1970, art 68(2)(b). As to revocation or variation or suspension of the certificate see art 92; and PARA 490.

7 As to the meaning of 'operating staff' see PARA 509 note 4.

8 Air Navigation Order 2005, SI 2005/1970, art 68(3).

9 Air Navigation Order 2005, SI 2005/1970, art 68(4). See note 4.

10 Air Navigation Order 2005, SI 2005/1970, art 68(5). See note 4.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/541. Aerial advertising and propaganda.

541. Aerial advertising and propaganda.

No aircraft while in the air over any part of the United Kingdom¹ or its territorial waters may be used, whether wholly or in part, for emitting or displaying any advertisement or other communication in such a way that the advertisement or communication is audible or visible from the ground².

This prohibition does not, however, apply in such circumstances as may be prescribed³. These circumstances are:

- 427 (1) the use of an aircraft for the emission or display of any communication solely for one or more of the following purposes, namely: (a) compliance with any law relating to the aircraft; (b) securing the safety of the aircraft or any person or property in it; (c) the furtherance, by or on behalf of a government department, by a person acting under a public duty or providing ambulance or rescue facilities by air, of measures in connection with circumstances, existing or imminent at the time the aircraft is used, which may cause danger to persons or property; or (d) civil defence, military or police purposes⁴;
- 428 (2) the use of any aircraft, other than a captive balloon, for the display of any mark or inscription (other than an illuminated sign) on the body of the aircraft⁵;
- 429 (3) the use of any captive balloon for the display of any mark or inscription on the body of the balloon where at all stages of its flight the balloon is not more than seven metres in any linear dimension or does not have a total capacity of more than 20 cubic metres⁶;
- 430 (4) the use of any aeroplane for the display of any mark or inscription on a banner towed behind the aeroplane⁷;
- 431 (5) the use of any kite or captive balloon, other than a controllable balloon, for the display of any mark or inscription on a banner or pennant attached to its mooring cables⁸;
- 432 (6) the use of an airship for communicating information by means of an illuminated sign attached to the airship⁹;
- 433 (7) the use of any helicopter for communicating information by means of any sign attached to, but not towed behind, the helicopter¹⁰; or
- 434 (8) the use of any balloon in free controlled flight which displays any identifying mark or inscription on any basket, car or other equipment attached to it¹¹.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 Civil Aviation Act 1982 s 82(1). Any person who uses an aircraft, or knowingly causes or permits it to be used, in contravention of this provision is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale or imprisonment for a term not exceeding three months or to both: s 82(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 50 note 8. As from a day to be appointed, the liability to imprisonment is removed: Civil Aviation Act 1982 s 82(2) (prospectively amended by the Criminal Justice Act 2003 s 332, Sch 37 Pt 9). At the date at which this volume states the law, no such day had been appointed.

If an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributed to the neglect of, any director, manager, secretary or other officer, he too is guilty of the offence: Civil Aviation Act 1982 s 99(1). For the purpose of conferring jurisdiction any offence is deemed to have been committed in any place where the offender may for the time being be: s 99(3).

- 3 Civil Aviation Act 1982 s 82(1).
- 4 Civil Aviation (Aerial Advertising) Regulations 1995, SI 1995/2943, reg 4(a).
- 5 Civil Aviation (Aerial Advertising) Regulations 1995, SI 1995/2943, reg 4(b). As to the meaning of 'captive balloon' see PARA 360 note 5; definition applied by reg 3(a); Interpretation Act 1978 s 17(2).
- 6 Civil Aviation (Aerial Advertising) Regulations 1995, SI 1995/2943, reg 4(c).
- 7 Civil Aviation (Aerial Advertising) Regulations 1995, SI 1995/2943, reg 4(d). As to the towing of articles see PARA 536.
- 8 Civil Aviation (Aerial Advertising) Regulations 1995, SI 1995/2943, reg 4(e). As to the meaning of 'controllable balloon' see PARA 559 note 2; definition applied by reg 3(a); Interpretation Act 1978 s 17(2).
- 9 Civil Aviation (Aerial Advertising) Regulations 1995, SI 1995/2943, reg 4(f).
- 10 Civil Aviation (Aerial Advertising) Regulations 1995, SI 1995/2943, reg 4(g).
- 11 Civil Aviation (Aerial Advertising) Regulations 1995, SI 1995/2943, reg 4(h). As to the meaning of 'free controlled flight' see PARA 559 note 7; definition applied by reg 3(a); Interpretation Act 1978 s 17(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/542. Aerial photography and survey.

542. Aerial photography and survey.

An aircraft registered in a contracting state¹ other than the United Kingdom², or in a foreign country, must not fly over the United Kingdom for the purpose of aerial photography or aerial survey (whether or not valuable consideration³ is given or promised) or for the purpose of any other form of aerial work except with the permission of the Secretary of State⁴, who may grant such permission to the operator⁵ or charterer of the aircraft subject to such conditions as he thinks fit⁶.

The Secretary of State may revoke, suspend or vary any such permission⁷, in which case the holder of the permission must surrender the permission to the Secretary of State within a reasonable time of being required to do so⁸.

1 As to the meaning of 'contracting state' see PARA 367 note 4.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 As to the meaning of 'valuable consideration' see PARA 363 note 3.

4 As to the Secretary of State see PARA 33.

5 As to the meaning of 'operator' see PARA 437.

6 Air Navigation Order 2005, SI 2005/1970, art 140(1). As to aerial work see PARA 364. Without prejudice to art 93 (see PARA 491) or art 140(1), any breach by a person to whom a permission has been granted under art 115 of any condition to which that permission was subject constitutes a contravention of art 140: art 140(2). As to the effect on the validity of the permit of breach of the conditions see also art 93(7); and PARA 492.

A person acting in contravention of art 140 is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 15 Pt B. As to the statutory maximum see PARA 43 note 12.

7 See the Air Navigation Order 2005, SI 2005/1970, art 93(1), (4), (5), (8), (9). Save in respect of a provisional suspension or variation this power can only be exercised after the Secretary of State has notified the permit holder of his intention and after due consideration of the case: art 93(2). As to provisional suspension or variation see art 93(3). See also PARAS 490-491.

8 See the Air Navigation Order 2005, SI 2005/1970, art 93(6). See further PARA 491.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/543. Flights over foreign countries.

543. Flights over foreign countries.

The operator¹ and the commander² of an aircraft registered in the United Kingdom³ which is being flown over any foreign country must not allow that aircraft to be used for a purpose which is prejudicial to the security, public order or public health of, or to the safety of air navigation in relation to, that country⁴.

Where there are grounds for the appropriate aeronautical authorities⁵ of that country to believe that the aircraft is being or will be used for such prejudicial purposes⁶, or where the particular flight has not been duly authorised⁷, the operator and the commander of the aircraft must comply with any directions given by such authorities unless the lives of persons on board the aircraft or the safety of the aircraft would thereby be endangered⁸.

1 As to the meaning of 'operator' see PARA 437.

2 As to the meaning of 'commander' see PARA 456.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq. The provisions of the Air Navigation Order 2005, SI 2005/1970, art 141 also apply to aircraft not registered in the United Kingdom but whose operator's principal place of business or permanent residence is in the United Kingdom: see art 141(1), (3).

4 Air Navigation Order 2005, SI 2005/1970, art 141(1). A person does not contravene art 141(1) if he neither knew nor suspected that the aircraft was being used for prejudicial purposes: art 141(2).

A person acting in contravention of art 141 is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine or imprisonment for a term not exceeding two years or to both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.

5 'Appropriate aeronautical authorities' includes any person, whether a member of a country's military or civil authorities, authorised under the law of the foreign country to issue directions to aircraft flying over that country: Air Navigation Order 2005, SI 2005/1970, art 141(6).

6 Air Navigation Order 2005, SI 2005/1970, art 141(3)(b).

7 Air Navigation Order 2005, SI 2005/1970, art 141(3)(a).

8 Air Navigation Order 2005, SI 2005/1970, art 141(3). Such a requirement is without prejudice to any other requirement to comply with directions of an aeronautical authority: art 141(5). See note 4. A person does not contravene art 141(3) if he neither knew nor suspected that directions were being given by the appropriate aeronautical authorities: art 141(4). Failure to comply with a direction is an offence: see arts 147, 148, Sch 14.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/544. Aerobatic manoeuvres.

544. Aerobatic manoeuvres.

An aircraft must not carry out any aerobatic manoeuvre¹ (1) over the congested area² of any city, town or settlement; or (2) within controlled airspace³ except with the consent of the appropriate air traffic control unit⁴.

1 'Aerobatic manoeuvres' includes loops, spins, rolls, bunts, stall turns, inverted flying and any other similar manoeuvre: Air Navigation Order 2005, SI 2005/1970, art 155(1).

2 As to the meaning of 'congested area' see PARA 378 note 25.

3 As to the meaning of 'controlled airspace' see PARA 547.

4 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 15. As to the penalty for contravention of this rule see PARA 531 note 8. As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(iv) General Flight Rules/545. Flying displays.

545. Flying displays.

No person may act as the organiser of a flying display¹ (known as the 'flying display director'), unless he has obtained the permission of the Civil Aviation Authority ('CAA')² for that flying display and complies with any conditions specified by it³. The commander of an aircraft intending to participate in a flying display must take all reasonable steps to satisfy himself before he participates that⁴ (1) the flying display director has been granted an appropriate permission⁵; (2) the flight can comply with any relevant conditions subject to which that permission may have been granted⁶; and (3) the pilot has been granted an appropriate pilot display authorisation⁷. The commander of an aircraft participating in a flying display for which a permission has been granted must comply with any conditions subject to which that permission may have been granted⁸. No person may act as a pilot of an aircraft participating in a flying display unless he holds an appropriate pilot display authorisation and he complies with any conditions subject to which the authorisation may have been given⁹. The flying display director may not permit any person to act as pilot of an aircraft which participates in a flying display unless that person holds an appropriate pilot display authorisation¹⁰.

The CAA must grant a permission to any person applying if it is satisfied that the applicant is a fit and competent person, having regard in particular to his previous conduct and experience, his organisation, staffing and other arrangements, to safely organise the proposed flying display¹¹. The permission may be granted subject to such conditions, which may include conditions in respect of military aircraft, as the CAA thinks fit¹². The CAA must, either unconditionally or subject to such conditions as it thinks fit¹³ (a) grant a pilot display authorisation authorising the holder to act as pilot of an aircraft taking part in a flying display upon being satisfied that the applicant is a fit person to hold the authorisation and is qualified by reason of his knowledge, experience, competence, skill, physical and mental fitness to fly in accordance with it¹⁴; and (b) authorise a person to conduct such examinations or tests as it may specify¹⁵. A pilot display authorisation remains in force for the period indicated in the authorisation¹⁶.

The flying display director must not permit any military aircraft to participate in a flying display unless he complies with any conditions specified in respect of military aircraft subject to which permission for the flying display may have been granted¹⁷.

1 As to the meaning of 'flying display' see PARA 365 note 5.

2 As to the CAA see PARA 50 et seq.

3 Air Navigation Order 2005, SI 2005/1970, art 80(1). This does not apply to either (1) a flying display which takes place at an aerodrome in the occupation of the Ministry of Defence or any visiting force or any other premises in the occupation or under the control of the Ministry of Defence; or (2) a flying display at which the only participating aircraft are military aircraft: art 80(11). Nothing in art 80 applies to an aircraft race or contest or to an aircraft taking part in such a race or contest or to the commander or pilot of the aircraft whether or not the race or contest is held in association with a flying display: art 80(13). The provisions of art 80(1)-(4) do not apply to a flying display at which the only participating aircraft are balloons: art 80(11A) (added by SI 2007/274). As to the meaning of 'aerodrome' see PARA 175. As to the meaning of 'commander' see PARA 456. As to the Ministry of Defence see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 438 et seq. A person acting in contravention of the Air Navigation Order 2005, SI 2005/1970, art 80 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

4 Air Navigation Order 2005, SI 2005/1970, art 80(2)(a).

5 Air Navigation Order 2005, SI 2005/1970, art 80(2)(a)(i).

6 Air Navigation Order 2005, SI 2005/1970, art 80(2)(a)(ii).

7 Air Navigation Order 2005, SI 2005/1970, art 80(2)(a)(iii). 'Appropriate pilot display authorisation' means a pilot display authorisation which is valid and appropriate to the intended flight and which has either been granted by the CAA or by a competent full member state of the Joint Aviation Authorities (JAA) (see PARA 24): art 80(8)(a). However, a pilot display authorisation granted by the competent authority of a full member state of the JAA is not an appropriate pilot display authorisation if the CAA has given a direction to that effect, either in respect of a particular authorisation, a specified category of authorisation or generally: art 80(9), (10). Failure to comply with a direction is an offence: see arts 147, 148, Sch 14. As to the meaning of 'competent authority' see PARA 415 note 9.

8 Air Navigation Order 2005, SI 2005/1970, art 80(2)(b).

9 Air Navigation Order 2005, SI 2005/1970, art 80(3).

10 Air Navigation Order 2005, SI 2005/1970, art 80(4).

11 Air Navigation Order 2005, SI 2005/1970, art 80(5)(a).

12 Air Navigation Order 2005, SI 2005/1970, art 80(5)(b).

13 Air Navigation Order 2005, SI 2005/1970, art 80(6).

14 Air Navigation Order 2005, SI 2005/1970, art 80(6)(a). For this purpose the applicant must furnish such evidence and undergo such examinations and tests as the CAA may require: art 80(6)(a).

15 Air Navigation Order 2005, SI 2005/1970, art 80(6)(b).

16 Air Navigation Order 2005, SI 2005/1970, art 80(7), which is expressed to be subject to the provisions of art 92 (see PARAS 490, 492).

17 Air Navigation Order 2005, SI 2005/1970, art 80(12).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/546. Provision of air traffic services.

(v) Air Traffic Rules

546. Provision of air traffic services.

No person in charge of the provision of an air traffic control service¹ may provide a service in respect of United Kingdom² airspace, or airspace outside the United Kingdom for which the United Kingdom has, in pursuance of international arrangements, undertaken to provide air navigation services³, otherwise than under and in accordance with the terms of an air traffic control approval granted to him by the Civil Aviation Authority ('CAA')⁴. The CAA must grant an air traffic control approval if it is satisfied that the applicant is competent, having regard to his organisation, staffing, equipment, maintenance and other arrangements, to provide a service which is safe for use by aircraft⁵.

The holder of such an approval must not permit any person to act as an air traffic controller or to act as a student air traffic controller⁶ in the provision of the service under the approval unless such person holds an appropriate licence, and the holder has satisfied himself that such person is competent to perform his duties⁷.

A person is not permitted to provide an air traffic control service at any place unless⁸ (1) the service is provided in accordance with the standards and procedures specified in a manual of air traffic services in respect of that place⁹; (2) the manual is produced to the CAA within a reasonable time after a request for its production is made by the CAA¹⁰; and (3) such amendments or additions have been to the manual as the CAA may from time to time require¹¹.

In the case of an aerodrome¹² in respect of which there is equipment for providing aid for holding, aid for let-down or aid for approach to landing by radio or radar, the person in charge of the aerodrome must inform the CAA in advance of the periods during and times at which any of that equipment is to be in operation for the purpose of providing such aid as is specified by that person; and, during any period and at such times as are notified, that person must cause an approach control service¹³ to be provided¹⁴.

The CAA may, in the interests of safety, direct the person in charge of an aerodrome that there must be provided in respect of any aerodrome¹⁵ such an air traffic control service, flight information service¹⁶ or means of two-way radio communication¹⁷ as the CAA considers appropriate¹⁸. In the interests of safety, the CAA may also direct the holder of an air traffic services licence¹⁹ to the same effect in respect of United Kingdom airspace or airspace outside the United Kingdom for which the United Kingdom has in pursuance of international arrangements undertaken to provide air navigation services, otherwise than in respect of an aerodrome²⁰. The CAA may specify in any such direction the periods during which, the times at which, the manner in which, and the airspace within which, such service or means are to be provided²¹.

After consultation with the Secretary of State²², the CAA may direct any person in charge of the provision of air traffic services to provide air traffic services in respect of United Kingdom airspace or airspace outside the United Kingdom for which the United Kingdom has undertaken in pursuance of international arrangements to provide air traffic services²³. Such a direction may be made in the interests of ensuring the efficient use of airspace or to require that air traffic services are provided to a standard considered appropriate by the CAA for the airspace classification²⁴. The CAA may specify in any such direction the air traffic services and the

standard to which they are to be provided, and the periods during which, the times at which, the manner in which and the airspace within which such services are to be provided²⁵.

Provision is made for the approval of air traffic service equipment²⁶ by the CAA²⁷ and for the production of documents and records relating to such approvals²⁸.

1 As to the meaning of 'air traffic control service' see PARA 161 note 2.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 As to air navigation functions see PARA 58.

4 Air Navigation Order 2005, SI 2005/1970, art 100(1). As to the CAA see PARA 50 et seq.

5 Air Navigation Order 2005, SI 2005/1970, art 100(2). This is subject to the CAA's powers to revoke, suspend or vary the approval under art 92: see PARA 490.

6 As to the meaning of 'act as an air traffic controller' and 'act as a student air traffic controller' see PARA 161 note 2.

7 Air Navigation Order 2005, SI 2005/1970, art 101. A person acting in contravention of art 101 is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

8 Air Navigation Order 2005, SI 2005/1970, art 102.

9 Air Navigation Order 2005, SI 2005/1970, art 102(a).

10 Air Navigation Order 2005, SI 2005/1970, art 102(b).

11 Air Navigation Order 2005, SI 2005/1970, art 102(c).

12 Government aerodromes are excluded: see the Air Navigation Order 2005, SI 2005/1970, art 103. As to the meaning of 'government aerodrome' see PARA 178.

13 'Approach control service' means an air traffic control service for any aircraft which is not receiving an aerodrome control service, which is flying in, or in the vicinity of the aerodrome traffic zone of the aerodrome in respect of which the service is being provided, whether or not the aircraft is flying by visual reference to the surface: Air Navigation Order 2005, SI 2005/1970, art 155(1). 'Aerodrome control service' means an air traffic control service for any aircraft on the manoeuvring area or apron of the aerodrome in respect of which the service is being provided or which is flying in, or in the vicinity of, the aerodrome traffic zone of that aerodrome by visual reference to the surface or any aircraft transferred from approach control in accordance with procedures approved by the CAA: art 155(1). As to the meaning of 'aerodrome traffic zone' see PARA 547. As to the meaning of 'manoeuvring area' see PARA 305 note 3; and as to the meaning of 'apron' see PARA 304 note 1.

14 Air Navigation Order 2005, SI 2005/1970, art 103.

15 Government aerodromes are excluded: see the Air Navigation Order 2005, SI 2005/1970, art 104(1).

16 As to the meaning of 'flight information service' see PARA 161 note 6.

17 The person in charge of an aerodrome provided with means of two-way radio communication must not cause or permit any call sign to be used for a purpose other than a purpose for which that call sign has been notified: Air Navigation Order 2005, SI 2005/1970, art 106. As to radio equipment see PARAS 416-421.

18 Air Navigation Order 2005, SI 2005/1970, art 104(1). The person who has been directed under art 104(1) or art 104(2) (see the text to notes 19-20) must cause such a service or means to be provided in accordance with any such direction: art 104(4). Failure to comply with any direction under the Air Navigation Order 2005, SI 2005/1970, is an offence: see arts 147, 148, Sch 14.

A direction under art 104(1) or art 104(2) can be made on a provisional basis pending inquiry into or consideration of the case and if so it will have effect as though it were an air traffic direction: art 104(5).

19 Is an air traffic service licence granted under the Transport Act 2000 Pt I (ss 1-107): see PARA 139 et seq.

20 See the Air Navigation Order 2005, SI 2005/1970, art 104(2). See further note 18.

- 21 Air Navigation Order 2005, SI 2005/1970, art 104(3).
- 22 As to the Secretary of State see PARA 33.
- 23 Air Navigation Order 2005, SI 2005/1970, art 105(1). The person who has been directed must cause such a service to be provided in accordance with any such direction: art 105(4).
- 24 Air Navigation Order 2005, SI 2005/1970, art 105(2).
- 25 Air Navigation Order 2005, SI 2005/1970, art 105(3).
- 26 For these purposes, 'air traffic service equipment' means ground based equipment, including an aeronautical radio station, used or intended to be used in connection with the provision of a service to an aircraft in flight or on the ground, the equipment being not otherwise approved by or under the Air Navigation Order 2005, SI 2005/1970: art 155(1). Excluded from this definition are any public electronic communications network and any equipment in respect of which the CAA has made a direction that it is not to be air traffic service equipment for the purposes of arts 124, 125: art 155(1). As to the meaning of 'aeronautical radio station' see PARA 505 note 8. 'Public electronic communications network' has the same meaning as in the Communications Act 2003 s 151 (see **TELECOMMUNICATIONS** vol 97 (2010) PARA 104): Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the procurement of air navigation equipment see the Procurement of Air Navigation Equipment (Technical Specifications) Regulations 1997, SI 1997/2329.
- 27 See the Air Navigation Order 2005, SI 2005/1970, art 124. As to the maintenance etc of such records see art 125; and PARA 254.
- 28 See the Air Navigation Order 2005, SI 2005/1970, arts 89, 90.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/547. Meanings of 'aerodrome traffic zone', 'control area', 'control zone' and 'controlled airspace'.

547. Meanings of 'aerodrome traffic zone', 'control area', 'control zone' and 'controlled airspace'.

'Aerodrome traffic zone' means the following airspace, being airspace in the vicinity of an aerodrome¹ which is notified² for these purposes³:

- 435 (1) in relation to an aerodrome other than one which is on an offshore installation⁴:
- 7
- 9. (a) at which the length of the longest runway is notified as 1,850 metres or less, the airspace extending from the surface to a height of 2,000 feet above the level of the aerodrome within the area bounded by a circle centred on the notified mid-point of the longest runway of the aerodrome and having a radius of two nautical miles⁵;
- 10. (b) at which the length of the longest runway is notified as greater than 1,850 metres, the airspace extending from the surface to a height of 2,000 feet above the level of the aerodrome within the area bounded by a circle centred on the notified mid-point of the longest runway and having a radius of two and a half nautical miles⁶; and
- 8
- 436 (2) in relation to an aerodrome which is on an offshore installation, the airspace extending from mean sea level to 2,000 feet above mean sea level and within 1 and a half nautical miles of the offshore installation⁷.

However, it does not include any part of that airspace which is within the aerodrome traffic zone of another aerodrome notified as a controlling aerodrome⁸.

A 'control area' is controlled airspace which has been notified as a control area and which extends upwards from a notified altitude or flight level; a 'control zone' is controlled airspace which has been notified as a control zone and which extends upwards from the surface; and 'controlled airspace' means airspace which has been notified as Class A, Class B, Class C, Class D or Class E airspace⁹.

1 As to the meaning of 'aerodrome' see PARA 175.

2 As to the meaning of 'notified' see PARA 178 note 6.

3 Ie for the purposes of the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 45: see PARA 564.

4 As to offshore installations see PARA 30 note 4.

5 Air Navigation Order 2005, SI 2005/1970, arts 155(1), 156(1). Where such an aerodrome traffic zone would extend less than 1 and a half nautical miles beyond the end of any runway at the aerodrome, then head (b) in the text applies as though the length of the longest runway is notified as greater than 1,850 metres: art 156(2). As to the meaning of 'nautical mile' see PARA 459 note 4.

6 Air Navigation Order 2005, SI 2005/1970, art 156(3).

7 Air Navigation Order 2005, SI 2005/1970, art 156(4).

8 Air Navigation Order 2005, SI 2005/1970, art 156(5).

9 Air Navigation Order 2005, SI 2005/1970, art 155(1). 'Class A airspace', 'Class B airspace', 'Class C airspace', 'Class D airspace' and 'Class E airspace' mean airspace respectively notified as such: Air Navigation Order 2005, SI 2005/1970, art 155(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/548. Weather reports and forecasts.

548. Weather reports and forecasts.

Immediately before an aircraft flies, its commander¹ must examine the current reports and forecasts of the weather conditions on the proposed flight path, being reports and forecasts which it is reasonably practicable for him to obtain, in order to determine whether instrument meteorological conditions² prevail or are likely to prevail during any part of the flight³.

An aircraft which is unable to communicate by radio with an air traffic control unit⁴ at the aerodrome⁵ of destination must not begin a flight to an aerodrome within a control zone⁶ if the weather reports and forecasts which it is reasonably practicable for the commander to obtain indicate that the aircraft will arrive at that aerodrome when ground visibility⁷ is less than 10 kilometres or the cloud ceiling⁸ is less than 1,500 feet⁹ unless, before take-off, he has obtained permission to enter the aerodrome traffic zone¹⁰ from an air traffic control unit at that aerodrome¹¹.

1 As to the meaning of 'commander' see PARA 456.

2 'Instrument meteorological conditions' means weather precluding flight in compliance with the visual flight rules: Air Navigation Order 2005, SI 2005/1970, art 155(1).

3 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 7(1), (2). As to weather conditions see further PARAS 511-516. As to the commander's pre-flight action see PARA 494.

4 As to the meaning of 'air traffic control unit' see PARA 164 note 3.

5 As to the meaning of 'aerodrome' see PARA 175.

6 As to the meaning of 'control zone' see PARA 547.

7 'Ground visibility' means the horizontal visibility at ground level: Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 1(e).

8 As to the meaning of 'cloud ceiling' see PARA 512 note 7.

9 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 7(3).

10 As to the meaning of 'aerodrome traffic zone' see PARA 547.

11 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 7(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/549. Speed limitation.

549. Speed limitation.

An aircraft must not fly below flight level 100¹ at a speed which according to its air speed indicator is more than 250 knots unless it is flying in accordance with the terms of a written permission of the Civil Aviation Authority ('CAA')². The CAA may grant such permission subject to such conditions as it thinks fit and either generally or in respect of any aircraft or class of aircraft³.

1 As to the meaning of 'flight level' see PARA 415 note 16.

2 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 21(1), (2)(g), (3). There are a number of exceptions to this rule: see r 21(2). As to the CAA see PARA 50 et seq.

3 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 21(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/550. Compliance with visual or instrument flight rules.

550. Compliance with visual or instrument flight rules.

An aircraft must always be flown in accordance with the visual flight rules ('VFR')¹ or the instrument flight rules ('IFR')². In the United Kingdom³ an aircraft must be flown in accordance with the instrument flight rules when it is flying at night⁴ outside a control zone⁵ and when it is flying inside such a zone unless it is flying a special VFR flight⁶. In relation to flights under visual meteorological conditions⁷ in Class A airspace, the commander of an aircraft must comply with the requirements concerning flight plans⁸, air traffic clearance and position reports⁹ as if the flights were IFR flights¹⁰.

1 As to the visual flight rules see PARA 551.

2 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 20(1). As to the instrument flight rules see PARAS 552-557.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 As to the meaning of 'night' see PARA 291 note 2.

5 As to the meaning of 'control zone' see PARA 547.

6 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 20(2). 'Special VFR flight' means a flight made at any time in a control zone which is Class A airspace, or in any other control zone in instrument meteorological conditions or at night, in respect of which the appropriate air traffic control unit has given permission for the flight to be made in accordance with special instructions given by that unit instead of in accordance with the IFR and in the course of which flight the aircraft complies with any instructions given by that unit and remains clear of cloud and with the surface in sight: Sch 1 r 1(k). As to the meaning of 'instrument meteorological conditions' see PARA 548 note 2; As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3; and as to the meaning of 'Class A airspace' see PARA 547 note 9. 'VFR flight' means a flight conducted in accordance with the usual flight rules: see Sch 1 r 1(l).

7 'Visual meteorological conditions' means weather permitting flight in accordance with the visual flight rules: Air Navigation Order 2005, SI 2005/1970, art 155(1).

8 'Flight plan' means a plan containing such information as may be notified to an air traffic control service unit, being information provided or to be provided to that unit which relates to an intended flight, or part of a flight, of an aircraft in accordance with the Rules of the Air Regulations 2007, SI 2007/734: Sch 1 r 1(f).

9 As to the requirements of the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 rr 35-37: see PARAS 555-557.

10 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 18(1). 'IFR flight' means a flight conducted in accordance with the instrument flight rules: Sch 1 r 1(g). However, the commander may not elect to continue the flight in compliance with the visual flight rules for the purposes of Sch 1 r 36(2) (see PARA 556): Sch 1 r 18(2). The provisions of Sch 1 r 18(1) do not apply to the commander of a glider which is flying in Class A airspace which is notified for this purpose if the glider is flown in accordance with such conditions such as may also be notified for this purpose: Sch 1 r 18(3). As to the meaning of 'commander' see PARA 456. As to the meaning of 'glider' see PARA 360 note 6.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/551. Visual flight rules.

551. Visual flight rules.

The visual flight rules ('VFR') differ within and outside controlled airspace¹.

The VFR provide that for an aircraft flying outside controlled airspace the VFR are that an aircraft flying at or above flight level 100² must remain at least 1,500 metres horizontally and 1,000 feet vertically away from cloud and in a flight visibility³ of at least 8 kilometres⁴; and an aircraft outside controlled airspace flying below that flight level must remain at least 1,500 metres horizontally and 1,000 feet vertically away from cloud and in a flight visibility of at least 5 kilometres⁵.

In relation to aircraft flying within controlled airspace the VFR provide that an aircraft flying within Class B airspace⁶ at or above flight level 100 must remain clear of cloud and in a flight visibility of at least 8 kilometres; and below that flight level must remain clear of cloud and in a flight visibility of at least 5 kilometres⁷; and that an aircraft flying within Class C, D or E airspace⁸ at or above flight level 100 must remain at least 1,500 metres horizontally and 1,000 feet vertically away from cloud and in a flight visibility of at least 8 kilometres⁹, and below that flight level must remain at least 1,500 metres horizontally and 1,000 feet vertically away from cloud and in a flight visibility of at least 5 kilometres¹⁰. Unless otherwise authorised by the appropriate air traffic control unit, before an aircraft flies within Class B, C or D airspace during the notified¹¹ hours of watch of the appropriate air traffic control unit, the commander¹² of the aircraft must cause a flight plan¹³ to be communicated to the appropriate air traffic control unit and must obtain an air traffic control clearance to fly within that airspace¹⁴. The flight plan must contain such particulars of the flight as may be necessary to enable the air traffic control unit to issue a clearance and for search and rescue purposes¹⁵. When flying within Class B, C or D airspace during the notified hours of watch of the appropriate air traffic control unit, the commander of the aircraft must cause a continuous watch to be maintained on the notified radio frequency appropriate to the circumstances and comply with any instructions which the appropriate air traffic control unit may give in a particular case¹⁶.

1 See the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 25(1), (2). As to the meaning of 'controlled airspace' see PARA 547.

2 As to the meaning of 'flight level' see PARA 415 note 18.

3 'Flight visibility' means the visibility forward from the flight deck of an aircraft in flight: Air Navigation Order 2005, SI 2005/1970, art 155(1).

4 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 28(1). Neither this provision nor Sch 1 r 28(2) (see text and note 5) applies to a helicopter which is air-taxiing or conducting manoeuvres in accordance with Sch 1 r 6(i) (see PARA 578): Sch 1 r 28(6). 'Air-taxiing' means flight by a helicopter, or other type of aircraft capable of vertical take-off and landing, above the surface of an aerodrome at a ground speed of less than 20 knots for the purpose of taxiing in accordance with normal aviation practice: Sch 1 r 1(a).

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 28(2). This provision is deemed to be complied with if (1) the aircraft is flying at or below 3,000 feet above mean sea level, and remains clear of cloud, in sight of the surface and in a flight visibility of at least 5 kilometres (Sch 1 r 28(3)); (2) the aircraft, other than a helicopter, is flying at or below 3,000 feet above mean sea level at a speed which according to its air speed indicator is 140 knots or less, and remains clear of cloud, in sight of the surface and in a flight visibility of at least 1,500 metres (Sch 1 r 28(4)); or (3) in the case of a helicopter, it is flying at or below 3,000 feet above mean sea level at a speed which having regard to the visibility is reasonable, it remains clear of cloud and with the surface in sight, and is in a flight visibility of at least 1,500 metres (Sch 1 r 28(5) (substituted by SI 2007/1371)).

6 As to the meaning of 'Class B airspace' see PARA 547 note 9.

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 27(1). For the purposes of an aeroplane taking off from or approaching to land within Class B, C or D airspace, the visibility (if any) communicated to its commander by the appropriate air traffic control unit is taken to be the flight visibility for the time being: Sch 1 r 26. As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.

8 As to the meanings of 'Class C airspace', 'Class D airspace' and 'Class E airspace' see PARA 547 note 9.

9 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 27(2)(a).

10 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 27(2)(b). This provision is deemed to be complied with if (1) the aircraft is not a helicopter and is flying at or below 3,000 feet above mean sea level at a speed which according to its airspeed indicator is 140 knots or less and it remains clear of cloud, with the surface in sight and in a flight visibility of at least 5 kilometres; or (2) it is a helicopter flying at or below 3,000 feet above mean sea level and it remains clear of cloud, with the surface in sight, and in a flight visibility of at least 1,500 metres: Sch 1 r 27(3). For the purposes of an aeroplane taking off from or approaching to land within Class C or D airspace, the visibility (if any) communicated to its commander by the appropriate air traffic control unit is taken to be the flight visibility for the time being: Sch 1 r 27(3). Rule 27(1), (2) does not apply to a helicopter that is air-taxiing or conducting manoeuvres in accordance with Sch 1 r 6(i) (see PARA 578): Sch 1 r 27(4).

11 As to the meaning of 'notified' see PARA 178 note 6.

12 As to the meaning of 'commander' see PARA 456.

13 As to the meaning of 'flight plan' see PARA 550 note 8.

14 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 29(1). There are a number of exceptions to this rule: see Sch 1 r 31.

15 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 29(2). For exceptions to this rule see Sch 1 r 31. Any flight plan for a flight within United Kingdom reduced vertical separation minimum airspace must also state whether or not the aircraft is equipped with height keeping systems as required by the Air Navigation Order 2005, SI 2005/1970, arts 57, 58 (see PARA 415): Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 29(3). The commander of an aircraft must not cause a flight plan to be communicated to the appropriate air traffic control unit for VFR flight in Class C airspace above FL195 or along a Class C ATS route at any level unless authorised to do so by the Civil Aviation Authority ('CAA'): Sch 1 r 29(4). As to the meaning of 'United Kingdom reduced vertical separation minimum airspace' see PARA 415 note 20. As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the CAA see PARA 50 et seq.

16 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 30. For exceptions to this rule see Sch 1 r 31.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/552. Application of instrument flight rules.

552. Application of instrument flight rules.

As with the visual flight rules ('VFR')¹, the instrument flight rules ('IFR') differ within and outside controlled airspace². Where an aircraft is flying outside controlled airspace, the applicable IFR are the minimum height rules³ and the quadrantal and semi-circular rules⁴. Where an aircraft is flying within controlled airspace, the applicable IFR are the rules concerning minimum height⁵, flight plan and air traffic control clearance⁶, and position reports⁷.

1 See PARA 551.

2 See the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 32. As to the meaning of 'controlled airspace' see PARA 547.

3 As to the minimum height rules see the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 33; and PARA 553.

4 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 32(2). As to the quadrantal and semi-circular rules see Sch 1 r 34; and PARA 554.

5 See note 3.

6 As to flight plan and air traffic control clearance rules see the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 rr 35, 36; and PARAS 555-556. As to the meaning of 'flight plan' see PARA 550 note 8.

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 32(1). As to position reports rules see Sch 1 r 37; and PARA 557.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/553. Minimum height rules.

553. Minimum height rules.

In order to comply with the instrument flight rules¹, and without prejudice to the provisions in respect of low flying², an aircraft must not fly at a height of less than 1,000 feet above the highest obstacle within a distance of 5 nautical miles³ of the aircraft unless (1) it is necessary to do so in order to take off or land; (2) it is flying on a route notified⁴ for the purpose; (3) it has otherwise been authorised by the competent authority⁵ in relation to the area over which the aircraft is flying; or (4) it is flying at an altitude not exceeding 3,000 feet above mean sea level and remains clear of cloud and with the surface in sight⁶.

The requirement does not apply to a helicopter that is air-taxiing⁷ or conducting manoeuvres⁸.

1 As to the application of the instrument flight rules see PARA 552.

2 I.e. the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 5: see PARAS 576-579.

3 As to the meaning of 'nautical mile' see PARA 459 note 4.

4 As to the meaning of 'notified' see PARA 178 note 6.

5 As to the meaning of 'competent authority' see PARA 415 note 9.

6 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 33(1), (2).

7 As to the meaning of 'air-taxiing' see PARA 551 note 4.

8 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 33(3). As to exemptions for manoeuvring helicopters see Sch 1 r 6(i); and PARA 578.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/554. Quadrantal and semi-circular rules.

554. Quadrantal and semi-circular rules.

In order to comply with the instrument flight rules¹, an aircraft, when in level flight above 3,000 feet above mean sea level or above the appropriate transition altitude², whichever is the higher, must be flown at a level appropriate to its magnetic track³. The level of flight must be measured by an altimeter set, in the case of a flight over the United Kingdom⁴, to a pressure setting of 1,013.2 hectopascals⁵, or, in the case of any other flight, according to the system published by the competent authority⁶ in relation to the area over which the aircraft is flying⁷.

An aircraft may, however, fly at a level other than the required level described above if it is flying in conformity with instructions given by an air traffic control unit⁸ or in accordance with either notified en-route holding patterns or with holding procedures notified in relation to an aerodrome⁹.

1 As to the application of the instrument flight rules see PARA 552.

2 'Transition altitude' means the altitude notified in relation to flights over notified areas: Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 34(4). As to the meaning of 'notified' see PARA 178 note 6.

3 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 34(1). As to the meaning of 'flight level' see PARA 415 note 18. Levels of flight are set out in Sch 1 r 34, Tables 1, 2.

4 As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 34(2)(a).

6 As to the meaning of 'competent authority' see PARA 415 note 9.

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 34(2)(b).

8 As to the meaning of 'air traffic control unit' see PARA 164 note 3.

9 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 34(3). As to the meaning of 'aerodrome' see PARA 175.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/555. Flight plans.

555. Flight plans.

In order to comply with the instrument flight rules¹, before an aircraft either takes off from a point within any controlled airspace² or otherwise flies within any controlled airspace, the commander³ of the aircraft must send or transmit a flight plan⁴ to the appropriate air traffic control unit⁵ and obtain an air traffic control clearance⁶ based on that flight plan⁷. The flight plan must contain such particulars of the intended flight as may be necessary to enable the unit to issue an air traffic control clearance and for search and rescue purposes⁸.

Unless he has requested the appropriate air traffic control unit to cancel his flight plan, the commander of the aircraft must forthwith inform that unit when the aircraft lands within or leaves the controlled airspace⁹.

1 As to the application of the instrument flight rules see PARA 552.

2 As to the meaning of 'controlled airspace' see PARA 547.

3 As to the meaning of 'commander' see PARA 456.

4 As to the meaning of 'flight plan' see PARA 550 note 8.

5 As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.

6 As to air traffic control clearance see PARA 556.

7 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 35(1).

8 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 35(2)(a). Any flight plan for a flight within United Kingdom reduced vertical separation minimum airspace must also state whether or not the aircraft is equipped with height keeping systems as required by the Air Navigation Order 2005, SI 2005/1970, arts 57, 58 (see PARA 415); Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 35(2)(b). As to the meaning of 'United Kingdom reduced vertical separation minimum airspace' see PARA 415 note 20.

9 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 35(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/556. Air traffic control clearance.

556. Air traffic control clearance.

In order to comply with the instrument flight rules ('IFR')¹, the commander² of an aircraft flying within controlled airspace³ must fly in conformity with (1) the air traffic control clearance⁴ issued for the flight, as amended by any further instructions given by an air traffic control unit; (2) unless he is otherwise authorised by the appropriate air traffic control unit⁵, the instrument departure procedures notified⁶ in relation to the aerodrome of departure and the holding and instrument approach procedures notified in relation to the aerodrome of destination⁷. He is not, however, required to comply with these requirements if he is able to fly in uninterrupted visual meteorological conditions⁸ for so long as he remains in controlled airspace and he has informed the appropriate air traffic control unit of his intention to continue the flight in accordance with visual flight rules⁹ and has requested that unit to cancel his flight plan¹⁰.

If any deviation is made from the provisions described above for the purpose of avoiding immediate danger, the commander must as soon as possible inform the appropriate air traffic control unit of the deviation¹¹ as well as making a written report to the competent authority¹².

1 As to the application of the instrument flight rules see PARA 552.

2 As to the meaning of 'commander' see PARA 456.

3 As to the meaning of 'controlled airspace' see PARA 547.

4 'Air traffic control clearance' means an authorisation by an air traffic control unit for an aircraft to proceed under conditions specified by that unit: Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 1(b). As to the obtaining of air traffic control clearance see PARA 555.

5 As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.

6 As to the meaning of 'notified' see PARA 178 note 6.

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 36(1). As to the meaning of 'aerodrome' see PARA 175. As to flight plans see PARA 555.

8 As to the meaning of 'visual meteorological conditions' see PARA 550 note 7.

9 As to the visual flight rules see PARAS 550-551.

10 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 36(2). As to the meaning of 'flight plan' see PARA 550 note 8.

11 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 36(3).

12 See the Air Navigation Order 2005, SI 2005/1970, art 95(3), (4); and PARA 357. As to the meaning of 'competent authority' see PARA 415 note 9.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/557. Position reports.

557. Position reports.

In order to comply with the instrument flight rules ('IFR')¹, the commander² of an aircraft in IFR flight³ who flies in or is intending to enter controlled airspace⁴ must report to the appropriate air traffic control unit⁵ the time, position and level⁶ of the aircraft at such reporting points or at such intervals of time as may be notified⁷ for this purpose or as may be directed by that unit⁸.

1 As to the application of the instrument flight rules see PARA 552.

2 As to the meaning of 'commander' see PARA 456.

3 As to the meaning of 'IFR flight' see PARA 550 note 10.

4 As to the meaning of 'controlled airspace' see PARA 547.

5 As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.

6 As to the meaning of 'flight level' see PARA 415 note 18.

7 As to the meaning of 'notified' see PARA 178 note 6.

8 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 37.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(v) Air Traffic Rules/558. Notification of arrival and departure.

558. Notification of arrival and departure.

The commander¹ of an aircraft arriving at or departing from an aerodrome² in the United Kingdom³ must take all reasonable steps to ensure, upon landing or prior to departure, that the person in charge of the aerodrome or the air traffic control unit⁴ or flight information service unit⁵ at the aerodrome is given notice of the landing or departure⁶.

Before an aircraft of which the maximum total weight authorised⁷ exceeds 5,700 kilograms takes off from an aerodrome in the United Kingdom on a flight with an intended destination more than 40 kilometres from the aerodrome, the commander must cause a flight plan⁸, containing such particulars of the intended flight as may be necessary for search and rescue purposes, to be communicated to the air traffic control unit notified for this purpose⁹.

If the commander of an aircraft has caused notice of the intended arrival of the aircraft at an aerodrome to be given to the air traffic control unit or other authority at that aerodrome, he must ensure that the unit or authority is informed as quickly as possible of any change of intended destination and any estimated delay in arrival of 45 minutes or more¹⁰.

1 As to the meaning of 'commander' see PARA 456.

2 As to the meaning of 'aerodrome' see PARA 175.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 As to the meaning of 'air traffic control unit' see PARA 164 note 3.

5 'Flight information service unit' means a person appointed by the CAA or by any other person maintaining an aerodrome or area control centre to provide a flight information service and 'aerodrome flight information service unit' is to be construed accordingly: Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'area control centre' see PARA 164 note 3. As to the meaning of 'flight information service' see PARA 161 note 6.

6 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 17(2).

7 As to the meaning of 'maximum total weight authorised' see PARA 363 note 9.

8 As to the meaning of 'flight plan' see PARA 550 note 8. As to flight plans see PARAS 551, 555.

9 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 17(3). As to flights across any boundary of airspace notified as either the London or Scottish Flight Information Region, save for their common boundary, see Sch 1 r 17(4). As to the meaning of 'notified' see PARA 178 note 6.

10 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 17(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(vi) Restrictions on Specific Aircraft/559. Balloons, kites, airships, gliders and parascending parachutes.

(vi) Restrictions on Specific Aircraft

559. Balloons, kites, airships, gliders and parascending parachutes.

A balloon in captive or tethered flight¹ must not be flown within 60 metres of any vessel, vehicle or structure except with the permission of the person in charge of any such vessel, vehicle or structure². An uncontrollable balloon³ in captive or released flight⁴ must not be flown in airspace notified⁵ for this purpose except with the permission in writing of the Civil Aviation Authority ('CAA')⁶; and a controllable balloon must not be flown in free controlled flight⁷ within airspace notified for this purpose or within the aerodrome traffic zone of a notified aerodrome⁸ during the notified operating hours⁹ of that aerodrome, except during the day¹⁰ and in visual meteorological conditions¹¹.

Certain flights by balloons, kites, gliders and parascending parachutes¹² are not allowed except with the permission in writing of the CAA¹³. Such permission is required:

- 437 (1) to launch a glider or parascending parachute by winch and cable or by ground tow to a height of more than 60 metres above ground level¹⁴;
- 438 (2) to fly a balloon in captive flight within the aerodrome traffic zone of a notified aerodrome during the notified operating hours of that aerodrome¹⁵;
- 439 (3) to fly a balloon in captive or tethered flight at a height measured to the top of the balloon of more than 60 metres above ground level¹⁶;
- 440 (4) to fly a kite at a height of more than 30 metres above ground level within the aerodrome traffic zone of a notified aerodrome during the notified operating hours of that aerodrome¹⁷;
- 441 (5) to fly a kite at a height of more than 60 metres above ground level¹⁸; and
- 442 (6) to launch a parascending parachute by winch and cable or by ground tow within the aerodrome traffic zone of a notified aerodrome during the notified operating hours of that aerodrome¹⁹.

An airship with a capacity exceeding 3,000 cubic metres must not be moored other than at a notified aerodrome except with the permission of the CAA²⁰. An airship with a capacity not exceeding 3,000 cubic metres, unless it is moored on a notified aerodrome, must not be moored within 2 kilometres of a congested area²¹ or within the aerodrome traffic zone of a notified aerodrome except with the permission of the CAA²². When moored in the open an airship must be securely moored and must not be left unattended²³.

1 'Captive flight' means flight by an uncontrollable balloon (see note 3) during which it is attached to the surface by a restraining device; and 'tethered flight' means flight by a controllable balloon (see note 2) throughout which it is flown within limits imposed by a restraining device which attaches the balloon to the surface: Air Navigation Order 2005, SI 2005/1970, art 155(1).

2 Air Navigation Order 2005, SI 2005/1970, art 97(2). Article 97 applies only to aircraft within the United Kingdom: art 97(1). As to the meaning of 'United Kingdom' see PARA 30 note 1. A controllable balloon may not be flown in tethered flight within airspace notified for this purpose or within the aerodrome traffic zone of a notified aerodrome (see note 8) except with the permission of the appropriate air traffic control unit: art 97(6). A balloon when in captive flight (see note 3) must be securely moored and must not be left unattended unless it is fitted with a device which ensures its automatic deflation if it breaks free of its moorings: art 97(7). 'Controllable balloon' means a balloon, not being a small balloon, which is capable of free controlled flight (see note 7): art 155(1). As to the meaning of 'small balloon' see PARA 353 note 18. As to the meaning of 'captive

balloon' see PARA 360 note 5. As to the meaning of 'aerodrome traffic zone' see PARA 547. As to the meaning of 'aerodrome' see PARA 175. As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.

3 'Uncontrollable balloon' means a balloon, not being a small balloon, which is not capable of free controlled flight (see note 7): Air Navigation Order 2005, SI 2005/1970, art 155(1).

4 'Released flight' means flight by an uncontrollable balloon during which it is not attached to the surface by any form of restraining device: Air Navigation Order 2005, SI 2005/1970, art 155(1).

5 As to the meaning of 'notified' see PARA 178 note 6.

6 Air Navigation Order 2005, SI 2005/1970, art 97(4). As to the CAA see PARA 50 et seq.

7 'Free controlled flight' means flight during which a balloon is not attached to the surface by any form of restraining device (other than a tether not exceeding 5 metres in length which may be used as part of the take off procedure) and during which the height of the balloon is controllable by means of a device attached to the balloon and operated by the commander of the balloon or by remote control: Air Navigation Order 2005, SI 2005/1970, art 155(1).

8 A 'notified aerodrome' is an aerodrome notified for the purposes of the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 45 (see PARA 564): Air Navigation Order 2005, SI 2005/1970, art 155(1); Interpretation Act 1978 ss 17(2)(a), 23(1), (2).

9 'Notified operating hours' means the times notified in respect of an aerodrome during which the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 45 (see PARA 564) applies: Air Navigation Order 2005, SI 2005/1970, art 97(12)(b); Interpretation Act 1978 s 17(2).

10 For this purpose, 'day' means the time from half an hour before sunrise until half an hour after sunset (both times exclusive), sunset and sunrise being determined at surface level: Air Navigation Order 2005, SI 2005/1970, art 97(12)(a).

11 Air Navigation Order 2005, SI 2005/1970, art 97(5). As to the meaning of 'visual meteorological conditions' see PARA 550 note 7.

12 As to the meaning of 'glider' see PARA 360 note 6. As to the meaning of 'parascending parachute' see PARA 353 note 21.

13 See the Air Navigation Order 2005, SI 2005/1970, art 97(3).

14 Air Navigation Order 2005, SI 2005/1970, art 97(3)(a).

15 Air Navigation Order 2005, SI 2005/1970, art 97(3)(b).

16 Air Navigation Order 2005, SI 2005/1970, art 97(3)(c).

17 Air Navigation Order 2005, SI 2005/1970, art 97(3)(d).

18 Air Navigation Order 2005, SI 2005/1970, art 97(3)(e).

19 Air Navigation Order 2005, SI 2005/1970, art 97(3)(f).

20 Air Navigation Order 2005, SI 2005/1970, art 97(8).

21 As to the meaning of 'congested area' see PARA 378 note 25.

22 Air Navigation Order 2005, SI 2005/1970, art 97(9).

23 Air Navigation Order 2005, SI 2005/1970, art 97(10).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(vi) Restrictions on Specific Aircraft/560. Small balloons.

560. Small balloons.

A person must not cause or permit:

- 443 (1) a group of small balloons¹ exceeding 1,000 in number to be simultaneously released at a single site² wholly or partly within the aerodrome traffic zone³ of a notified aerodrome⁴ during the notified operating hours⁵ of that aerodrome unless that person has given to the Civil Aviation Authority ('CAA')⁶ not less than 28 days' previous notice in writing of the release⁷;
- 444 (2) a group of small balloons exceeding 2,000 but not exceeding 10,000 in number to be simultaneously released at a single site within airspace notified for this purpose, or within the aerodrome traffic zone of a notified aerodrome during the notified operating hours of that aerodrome, without the permission of the CAA⁸;
- 445 (3) a group of small balloons greater than 10,000 in number to be simultaneously released at a single site except with the permission of the CAA⁹.

1 As to the meaning of 'small balloon' see PARA 353 note 18.

2 'Simultaneously released at a single site' means the release of a specified number of balloons during a period not exceeding 15 minutes from within an area not exceeding 1 kilometre square: Air Navigation Order 2005, SI 2005/1970, art 97(12)(c).

3 As to the meaning of 'aerodrome traffic zone' see PARA 547.

4 As to the meaning of 'notified aerodrome' see PARA 559 note 8.

5 As to the meaning of 'notified operating hours' see PARA 559 note 9.

6 As to the CAA see PARA 50 et seq.

7 Air Navigation Order 2005, SI 2005/1970, art 97(11)(a).

8 Air Navigation Order 2005, SI 2005/1970, art 97(11)(b).

9 Air Navigation Order 2005, SI 2005/1970, art 97(11)(c).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(vi) Restrictions on Specific Aircraft/561. Small aircraft.

561. Small aircraft.

A person in charge of a small aircraft¹ which weighs more than 7 kilograms without its fuel, but including any articles or equipment installed in or attached to it at the commencement of its flight, must not fly the aircraft²:

- 446 (1) unless he has reasonably satisfied himself that the flight can safely be made³;
- 447 (2) in Class A, C, D or E airspace⁴, unless the permission of the appropriate air traffic control unit⁵ has been obtained⁶;
- 448 (3) within an aerodrome traffic zone⁷ during the notified⁸ hours of watch of the air traffic control unit (if any) at that aerodrome⁹, unless the permission of any such air traffic control unit has been obtained¹⁰;
- 449 (4) at a height exceeding 400 feet above the surface, unless it is flying in airspace described in head (2) or head (3) above and in accordance with the requirements thereof¹¹; or
- 450 (5) for aerial work purposes¹² other than in accordance with a permission issued by the Civil Aviation Authority ('CAA')¹³.

A person must not cause or permit any article or animal (whether or not attached to a parachute) to be dropped from a small aircraft so as to endanger persons or property¹⁴.

1 As to the meaning of 'small aircraft' see PARA 353 note 20.

2 Air Navigation Order 2005, SI 2005/1970, art 98(2).

3 Air Navigation Order 2005, SI 2005/1970, art 98(2)(a).

4 As to the meanings of 'Class A airspace', 'Class C airspace', 'Class D airspace' and 'Class E airspace' see PARA 547 note 9.

5 As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.

6 Air Navigation Order 2005, SI 2005/1970, art 98(2)(b).

7 As to the meaning of 'aerodrome traffic zone' see PARA 547.

8 As to the meaning of 'notified' see PARA 178 note 6.

9 As to the meaning of 'aerodrome' see PARA 175.

10 Air Navigation Order 2005, SI 2005/1970, art 98(2)(a).

11 Air Navigation Order 2005, SI 2005/1970, art 98(2)(b).

12 As to the meaning of 'aerial work' see PARA 364.

13 Air Navigation Order 2005, SI 2005/1970, art 98(2)(c). As to the CAA see PARA 50 et seq.

14 Air Navigation Order 2005, SI 2005/1970, art 98(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(vi) Restrictions on Specific Aircraft/562. Rockets.

562. Rockets.

No person may launch a small rocket¹ unless he has reasonably satisfied himself that the flight can be safely made and the airspace within which the flight will take place is, and will throughout the flight remain, clear of any obstructions including any aircraft in flight². He must also (1) for a flight within controlled airspace³, obtain the permission of the appropriate air traffic control unit⁴ for aircraft flying in that airspace⁵; (2) for a flight within an aerodrome traffic zone⁶ within specified times⁷, obtain information from the air traffic control unit⁸ or the aerodrome flight information service unit⁹ at that aerodrome, or, where there is no air traffic control unit or aerodrome flight information service unit, from the air/ground communications service unit¹⁰ at that aerodrome, to enable the flight to be conducted safely¹¹; (3) for a flight for aerial work purposes¹², carry it out under and in accordance with a permission granted by the Civil Aviation Authority ('CAA')¹³.

No person is permitted to launch a large rocket¹⁴ unless he does so under and in accordance with a permission granted by the CAA¹⁵.

The provisions set out above do not apply to an activity to which the Outer Space Act 1986¹⁶ applies or to a military rocket¹⁷.

1 For the purposes of the Air Navigation Order 2005, SI 2005/1970, 'small rocket' means a rocket of which the total impulse of the motor or combination of motors does not exceed 10,240 Newton-seconds; and 'rocket' means a device which is propelled by ejecting expanding gasses generated in its motor from self contained propellant and which is not dependent on the intake of outside substances, and it includes any part of the device intended to become separated during operation: art 155(1). Article 99 applies to small rockets of which the total impulse of the motor or combination of motors exceeds 160 Newton-seconds: art 99(1)(a).

2 Air Navigation Order 2005, SI 2005/1970, art 99(3), (4).

3 As to the meaning of 'controlled airspace' see PARA 547.

4 As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.

5 Air Navigation Order 2005, SI 2005/1970, art 99(3), (5)(a).

6 As to the meaning of 'aerodrome traffic zone' see PARA 547.

7 ie those specified in the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 45(1), Table col 2.

8 As to the meaning of 'air traffic control unit' see PARA 164 note 3.

9 As to the meaning of 'flight information service' see PARA 161 note 6.

10 'Air/ground communications service' means a service provided from an aerodrome to give information to pilots of aircraft flying in the vicinity of the aerodrome by means of radio signals and 'air/ground communications service unit' is to be construed accordingly: Air Navigation Order 2005, SI 2005/1970, art 155(1).

11 Air Navigation Order 2005, SI 2005/1970, art 99(3), (5)(b).

12 As to the meaning of 'aerial work' see PARA 364.

13 Air Navigation Order 2005, SI 2005/1970, art 99(3), (5)(c). As to the CAA see PARA 50 et seq.

14 'Large rocket' means a rocket of which the total impulse of the motor or combination of motors is more than 10,240 Newton-seconds: Air Navigation Order 2005, SI 2005/1970, art 155(1).

15 Air Navigation Order 2005, SI 2005/1970, art 99(1)(b), (6).

16 As to the Outer Space Act 1986 see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 211 et seq.

17 Air Navigation Order 2005, SI 2005/1970, art 99(2). 'Military rocket' means (1) any rocket being constructed for the naval, military or air force of any country under a contract entered into by the Secretary of State; and (2) any rocket in respect of which there is in force a certificate issued by the Secretary of State that the rocket is to be treated for the purposes of the Air Navigation Order 2005, SI 2005/1970, as a military rocket: art 155(1). As to the Secretary of State see PARA 33.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(vii) Aerodrome and Collision Avoidance Rules/563. Operation on or near aerodromes.

(vii) Aerodrome and Collision Avoidance Rules

563. Operation on or near aerodromes.

Notwithstanding that a flight is being made with air traffic control clearance¹, it remains the duty of the commander² of an aircraft to take all possible measures to ensure that his aircraft does not collide with any other aircraft or vehicle³.

Where a flying machine, glider or airship⁴ is flying in the vicinity of what its commander knows or ought reasonably to know to be an aerodrome⁵, or moving on an aerodrome, it must, unless the air traffic control unit⁶, in the case of an aerodrome having such a unit, otherwise authorises⁷ (1) conform to the pattern of traffic formed by other aircraft intending to land at that aerodrome, or keep clear of the airspace in which the pattern is formed⁸; and (2) make all turns to the left unless ground signals otherwise indicate⁹. It must also take off and land in the direction indicated by the ground signals or, if no such signals are displayed, into the wind unless good aviation practice demands otherwise¹⁰.

A flying machine or glider may not land on a runway¹¹ at an aerodrome if there are other aircraft on the runway unless the air traffic control unit at the aerodrome otherwise authorises¹²; and after landing a flying machine must move clear of the landing area in use as soon as possible¹³.

1 As to the meaning of 'air traffic control clearance' see PARA 556 note 4.

2 As to the meaning of 'commander' see PARA 456.

3 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 rr 8(1), 42(2). As to the penalty for contravention of these rules see PARA 531 note 8. As to the rules for avoiding collisions see Sch 1 rr 8, 10, 42, 43; and PARAS 306, 567-569.

4 As to the classification of aircraft see PARA 360.

5 As to the meaning of 'aerodrome' see PARA 175.

6 As to the meaning of 'air traffic control unit' see PARA 164 note 3.

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 12(2).

8 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 12(1)(a).

9 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 12(1)(b).

10 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 14(1).

11 'Runway' means an area, whether or not paved, which is provided for the take-off or landing of aircraft: Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 1(i).

12 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 14(2), (5). For special provisions where take-off and landing are not confined to runways see Sch 1 r 14(3).

13 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 14(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(vii) Aerodrome and Collision Avoidance Rules/564. Aerodrome traffic zones.

564. Aerodrome traffic zones.

An aircraft must not fly, take off or land within the aerodrome traffic zone¹ of an aerodrome unless its commander² has obtained the permission of the air traffic control unit³ there or he has obtained information to enable the flight to be conducted safely within the zone (1) where there is no such unit, from the aerodrome flight information service unit⁴ there; and (2) where there are neither of these units, from the air/ground radio station at that aerodrome⁵.

The commander of the aircraft flying within such a zone must cause a continuous watch to be maintained on the appropriate radio frequency notified for air traffic control communications at that aerodrome, or if that is not possible, cause a watch to be kept for such instructions as may be issued by visual means⁶. If the aircraft is fitted with means of communication by radio with the ground, the commander must communicate his position and height to the air traffic control unit, the flight information service unit or the air/ground radio station (as the case may be) on entering the zone and immediately before leaving it⁷.

1 As to the meaning of 'aerodrome traffic zone' see PARA 547; and as to the meaning of 'aerodrome' see PARA 175.

2 As to the meaning of 'commander' see PARA 456.

3 As to the meaning of 'air traffic control unit' see PARA 164 note 3.

4 As to the meaning of 'flight information service unit' see PARA 558 note 5.

5 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 45(2)-(5). These provisions apply to (1) government aerodromes (see PARA 178) at such times as are notified; (2) aerodromes having an air traffic control unit or an aerodrome flight information service unit during the notified hours of watch of such a unit; and (3) licensed aerodromes having a means of two-way radio communication with aircraft during the notified hours of watch of the air/ground radio station: Sch 1 r 45(1). As to the penalty for contravention of this rule see PARA 531 note 8. As to the meaning of 'notified' see PARA 178 note 6.

6 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 45(6)(a), (b). See note 5.

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 45(6)(c). See note 5.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(vii) Aerodrome and Collision Avoidance Rules/565. Radio navigation aids.

565. Radio navigation aids.

The commander¹ of an aircraft must not make use of any radio navigation aid without complying with such restrictions and appropriate procedures as may be notified² in relation to that aid, unless authorised by an air traffic control unit³. However, he is not required to comply with those restrictions and procedures if he is required to comply with the provisions relating to flight plans⁴ and air traffic control clearance⁵.

1 As to the meaning of 'commander' see PARA 456.

2 As to the meaning of 'notified' see PARA 178 note 6.

3 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 22(1), (2)(b). As to the meaning of 'air traffic control unit' see PARA 164 note 3. As to the penalty for contravention of this rule see PARA 531 note 8.

4 As to flight plans see PARA 555.

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 22(2)(a). As to provisions relating to flight plans and air traffic control clearance see Sch 1 rr 35, 36; and PARAS 555-556.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(vii) Aerodrome and Collision Avoidance Rules/566. United Kingdom aerodrome flight rules.

566. United Kingdom aerodrome flight rules.

Additional rules must be complied with by aircraft operating in the vicinity of aerodromes in the United Kingdom. These include provisions (1) requiring notice of arrivals and intended departures to be given¹; (2) regulating the direction in which aircraft must land and the procedure for and manner of landing, regulating the manner and direction of take off, and relating to signals²; and (3) regulating the movement of aircraft and vehicles on aerodromes³.

1 See the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 17; and PARA 558.

2 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 rr 13, 14, 46-55; and PARAS 302-303.

3 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 rr 40-43; and PARAS 303-306.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(vii) Aerodrome and Collision Avoidance Rules/567. Rules for avoiding aerial collisions.

567. Rules for avoiding aerial collisions.

No aircraft¹ may be flown in such proximity to other aircraft as to create a danger of collision², and aircraft must not fly in formation unless their commanders have agreed to do so³.

An aircraft which is obliged⁴ to give way to another aircraft must avoid passing over or under it, or crossing ahead of it, unless passing well clear of it⁵. An aircraft which has the right of way must maintain its course and speed⁶. Notwithstanding that a flight may be being made with air traffic control clearance⁷, it remains the commander's duty to take all possible measures to ensure that his aircraft does not collide with any other aircraft⁸.

1 For the purpose of the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 8, a glider and the flying machine which is towing it are considered to be a single aircraft under the command of the commander of the towing flying machine: Sch 1 r 8(6). As to the meaning of 'commander' see PARA 456. As to the application of the general flight rules, in which the general rules for avoiding collisions are included, see PARAS 530-532.

2 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 8(2). As to the penalty for contravention of this rule see PARA 531 note 8.

3 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 8(3). See note 2. This prohibition does not apply to an aircraft flying under and in accordance with the terms of a police air operator's certificate: Sch 1 r 8(7). As to police air operators' certificates see PARAS 99-100.

4 Ie by the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 Section 4 (rr 7-24).

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 8(4). See note 2.

6 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 8(5). See note 2. This requirement does not apply to an aircraft flying under and in accordance with the terms of a police air operator's certificate: Sch 1 r 8(7).

7 As to the meaning of 'air traffic control clearance' see PARA 556 note 4.

8 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 8(1). See note 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(vii) Aerodrome and Collision Avoidance Rules/568. Right of way rules in flight.

568. Right of way rules in flight.

Subject to the rules as to aircraft approaching head on and overtaking¹, aircraft² of different classes when converging in the air must give way as follows: flying machines must give way to airships, gliders and balloons; airships to gliders and balloons; and gliders to balloons³. Where two aircraft are converging in the air at approximately the same altitude, the aircraft which has the other on its right must give way⁴; but mechanically driven aircraft must give way to aircraft which are towing other aircraft or objects⁵.

Where two aircraft are approaching head on or approximately so in the air and there is danger of collision, each must alter its course to the right⁶.

An aircraft being overtaken in the air has the right of way and the overtaking aircraft, whether climbing, descending or in horizontal flight, must keep out of the way of the other aircraft by altering course to the right and must keep out of the way of the other aircraft until that other aircraft has been passed and is clear, notwithstanding any change in the relative positions of the two aircraft⁷. A glider overtaking another glider in the United Kingdom⁸, however, may alter its course to the right or to the left⁹.

1 See the text and notes 5-9.

2 See PARA 567 note 1.

3 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 9(1). As to the penalty for contravention of this rule see PARA 531 note 8.

There is power to make rules requiring aircraft to give way to military aircraft: see the Air Navigation Order 2005, SI 2005/1970, art 95(1)(a); and PARA 357.

4 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 9(3).

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 9(2). See note 3.

6 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 10. See note 3.

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 11(1), (2). See note 3.

8 As to the meaning of 'United Kingdom' see PARA 30 note 1.

9 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 11(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(vii) Aerodrome and Collision Avoidance Rules/569. Right of way rules on landing and take-off.

569. Right of way rules on landing and take-off.

An aircraft¹ landing or on final approach to land has the right of way over other aircraft in flight or on the ground or water²; and if two or more flying machines, gliders or airships are approaching any place for the purpose of landing, the aircraft at the lower altitude has the right of way³. An aircraft must not overtake or cut in front of another aircraft on its final approach to land⁴. However, an aircraft whose commander⁵ is aware that another aircraft is making an emergency landing must give way to that aircraft⁶; and at night, notwithstanding that he has received permission to do so, must not attempt to land until he receives further permission to do so⁷. If an air traffic control unit⁸ has communicated to any aircraft an order of priority for landing, the aircraft must approach to land in that order⁹.

1 See PARA 567 note 1.

2 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 13(1). As to the penalty for contravention of this rule see PARA 531 note 8.

3 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 13(6). See note 2.

4 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 13(2). See note 2.

5 As to the meaning of 'commander' see PARA 456.

6 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 13(4). See note 2.

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 13(5). See note 2.

8 As to the meaning of 'air traffic control unit' see PARA 164 note 3.

9 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 13(3). See note 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(vii) Aerodrome and Collision Avoidance Rules/570. Right-hand side traffic rule.

570. Right-hand side traffic rule.

An aircraft which is flying within the United Kingdom¹ with the surface in sight and following a road, railway, canal or coastline, or any other line of landmarks, must keep them on its left².

¹ As to the meaning of 'United Kingdom' see PARA 30 note 1.

² Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 16(1). This rule does not apply to aircraft flying within controlled airspace in accordance with instructions given by the appropriate air traffic control unit: Sch 1 r 16(2). As to the meaning of 'controlled airspace' see PARA 547. As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3. As to the penalty for contravention of this rule see PARA 531 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(viii) Lights and Signals/571. Rules for night flying.

(viii) Lights and Signals

571. Rules for night flying.

By night¹ all aircraft must display the appropriate lights specified in the Rules of the Air², and may not display any other lights which might obscure or otherwise impair the visibility of, or be mistaken for, such lights³. By day an aircraft fitted with an anti-collision light⁴ must display that light in flight⁵.

A flying machine on an aerodrome⁶ in the United Kingdom⁷ must during the night display either the lights which it would be required to display when flying⁸ or specified lights⁹, unless it is stationary on the apron¹⁰ or a part of the aerodrome provided for the maintenance of aircraft¹¹. If it is fitted with a red anti-collision light, this light must be displayed during the day and night when the flying machine is stationary on the apron with its engines running¹².

Notwithstanding the provisions described above, the commander¹³ may switch off, or reduce the intensity of, any flashing light where it does or is likely to affect adversely the performance of the duties of any member of the flight crew¹⁴ or subject an outside observer to unreasonable dazzle¹⁵.

While an aircraft is in the United Kingdom and any light which is required to be displayed at night by it in flight fails and cannot be immediately repaired or replaced, the aircraft must not depart from the aerodrome¹⁶ and, if in flight, must land as soon as in the commander's opinion it can safely do so, unless authorised by the appropriate air traffic control unit¹⁷ to continue its flight¹⁸. An aircraft may continue to fly during the day in the event of a failure of an anti-collision light provided the light is repaired at the earliest practicable opportunity¹⁹.

1 As to the meaning of 'night' see PARA 291 note 2.

2 See the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 Section 8 (rr 46-55); and PARA 572. The Rules of the Air Regulations 2007, SI 2007/734, are commonly referred to as the Rules of the Air: see PARA 357.

3 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 47(1). As to the penalty for contravention of this rule see PARA 531 note 8.

4 'Anti-collision light' means, in relation to rotorcraft, a flashing red light and, in relation to any other aircraft, a flashing red or flashing white light, in either case showing in all directions: Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 1(c).

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 47(2). See note 3.

6 As to the meaning of 'aerodrome' see PARA 175.

7 As to the meaning of 'United Kingdom' see PARA 30 note 1.

8 As to these lights see the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 49.

9 As to these lights see the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 49(5)(c).

10 As to the meaning of 'apron' see PARA 304 note 1.

11 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 47(3)(a). See note 3.

12 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 47(3)(b). See note 3. A helicopter to which the Air Navigation Order 2005, SI 2005/1970, art 38 applies (requirement of operations manual: see PARAS 509-510), when stationary on an offshore installation, may switch off the anti-collision light as long as that is done in accordance with a procedure contained in the operations manual of the helicopter as a signal to ground personnel that it is safe to approach the helicopter for the purpose of embarkation or disembarkation of passengers or the loading or unloading of cargo: Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 47(4).

13 As to the meaning of 'commander' see PARA 456.

14 As to the meaning of 'flight crew' see PARA 456.

15 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 46(5).

16 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 48(1), (2). As to the penalty for contravention of this rule see PARA 531 note 8.

17 As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.

18 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 48(3). See note 16.

19 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 48(4). See note 16.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(viii) Lights and Signals/572. Lights and signals.

572. Lights and signals.

The Rules of the Air¹ contain detailed provisions as to the lights and other objects to be displayed by aircraft².

Separate provision is made as to the lights and other objects to be displayed by flying machines in the air at night³ or on an aerodrome⁴, by gliders at night⁵, by free balloons at night⁶, by captive balloons and kites at night⁷ and by day⁸, and by airships at night⁹ and by day¹⁰. There are separate rules for seaplanes on the water¹¹.

1 Ie the Rules of the Air Regulations 2007, SI 2007/734: see PARA 357.

2 See PARA 571. As to aerodrome signals and markings see the Rules of the Air Regulations 2007, SI 2007/734, rr 56-64; and PARA 302.

3 See the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 49.

4 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 47(3); and PARA 571. As to the meaning of 'aerodrome' see PARA 175.

5 See Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 50.

6 See Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 51. As to the meaning of 'free balloon' see PARA 360 note 5.

7 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 52. As to the meaning of 'captive balloon' see PARA 360 note 5.

8 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 53.

9 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 54.

10 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 55.

11 See the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75; and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 716 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(viii) Lights and Signals/573. Distress, urgency, safety and warning signals.

573. Distress, urgency, safety and warning signals.

The Rules of the Air¹ prescribe distress, urgency and safety signals to be made by aircraft in various circumstances. A number of radiotelephony², visual³ and sound⁴ distress signals are prescribed for use or display, either separately or together, signifying that an aircraft is threatened by grave and imminent danger and requests immediate assistance⁵.

Prescribed visual urgency signals⁶, given either together or separately, before the sending of a message, signify that the commander⁷ wishes to give notice of difficulties which compel the aircraft to land but that he does not require immediate assistance⁸; and prescribed radiotelephony⁹, visual¹⁰ and sound¹¹ signals, given either separately or together, indicate that the commander has an urgent message to transmit concerning the safety of a ship, aircraft, vehicle or other property, or of a person on board or within sight of the aircraft from which the signal is given¹².

1 Ie the Rules of the Air Regulations 2007, SI 2007/734: see PARA 357.

2 Ie the spoken word 'MAYDAY': see the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 64(1)(a).

3 Ie the signal SOS (...---...); a succession of pyrotechnic lights fired at short intervals each showing a single red light; a parachute flare showing a red light: see Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 64(1)(b).

4 Ie the sound signal SOS (...---...); a continuous sounding with any sound apparatus: see Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 64(1)(c).

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 64(1). For distress signals for use by seaplanes see the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996, SI 1996/75; and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 716 et seq.

6 Ie a succession of white pyrotechnic lights; the repeated switching on and off of the aircraft landing lights; the repeated switching on and off of its navigation lights in such a manner as to be clearly distinguished from ordinary flashing navigation lights: see the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 64(2)(a)-(c).

7 As to the meaning of 'commander' see PARA 456.

8 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 64(2).

9 Ie the repeated spoken word 'PAN PAN': see Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 64(3)(a).

10 Ie the signal XXX (...---...-): see Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 64(3)(b).

11 Ie the signal XXX (...---...-): see Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 64(3)(c).

12 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 64(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(ix) Airspace Restrictions/574. Restriction of flying.

(ix) Airspace Restrictions

574. Restriction of flying.

The Secretary of State¹ may deem it necessary in the public interest to restrict or prohibit flying by any aircraft in any airspace over the United Kingdom² or in the neighbourhood of an offshore installation³, or by any aircraft registered in the United Kingdom in certain other airspace⁴, by reason of (1) the intended gathering or movement of a large number of persons⁵; (2) the intended holding of an aircraft race or contest or of a flying display⁶; or (3) national defence or any other reason affecting the public interest⁷. Where he does so, he may make regulations⁸ prohibiting, restricting or imposing conditions on flight by such an aircraft⁹. These regulations may apply either generally or in relation to any class of aircraft¹⁰. It is an offence to contravene or permit the contravention of or fail to comply with any such regulations¹¹.

If the aircraft commander¹² becomes aware that the aircraft is flying in contravention of any such regulations made by reason of national defence or any other reason affecting the public interest he must cause the aircraft to leave the area by flying to the least possible extent over such area and the aircraft must not begin to descend while over such an area¹³.

1 As to the Secretary of State see PARA 33.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 Air Navigation Order 2005, SI 2005/1970, art 96(2)(a).

4 Air Navigation Order 2005, SI 2005/1970, art 96(2)(b). The airspace referred to in the text is any other airspace, being airspace in respect of which the United Kingdom government has undertaken to provide navigation services for aircraft in pursuance of international arrangements: see art 96(2)(b).

5 Air Navigation Order 2005, SI 2005/1970, art 96(1)(a).

6 Air Navigation Order 2005, SI 2005/1970, art 96(1)(b). As to flying displays see PARA 545.

7 Air Navigation Order 2005, SI 2005/1970, art 96(1)(c).

8 See eg the Air Navigation (Restriction of Flying) (Nuclear Installations) Regulations 2001, SI 2001/1607; the Air Navigation (Restriction of Flying) (Prisons) Regulations 2001, SI 2001/1657; the Air Navigation (Restriction of Flying) (Specified Area) Regulations 2005, SI 2005/964; the Air Navigation (Restriction of Flying) (Nuclear Installations) Regulations 2007, SI 2007/1929; the Air Navigation (Restriction of Flying) (Prisons) (Amendment) Regulations 2007, SI 2007/2377; and the Air Navigation (Restriction on Flying) (Scottish Highlands) Regulations 2008, SI 2008/1239.

9 Air Navigation Order 2005, SI 2005/1970, art 96(1).

10 Air Navigation Order 2005, SI 2005/1970, art 96(3).

11 Air Navigation Order 2005, SI 2005/1970, art 96(4). A person acting in contravention of art 96 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

12 As to the meaning of 'commander' see PARA 456.

13 See the Air Navigation Order 2005, SI 2005/1970, art 96(5). See also PARA 575.

UPDATE

574 Restriction of flying

NOTE 8--SI 2007/1929 amended: SI 2008/3169.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(ix) Airspace Restrictions/575. Flying in prohibited areas.

575. Flying in prohibited areas.

Where restrictions have been imposed by regulations upon flying over any area of the United Kingdom¹ by reason of national defence or any other reason affecting the public interest², or within airspace notified as a danger area³, the commander⁴ of an aircraft flying within such an area must forthwith comply with instructions given by radio by the appropriate air traffic control unit⁵ or by or on behalf of the person responsible for safety within the relevant airspace⁶.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 See the Air Navigation Order 2005, SI 2005/1970, art 96(1)(a),(c); and PARA 574.

3 'Danger area' means airspace which has been notified as such within which activities dangerous to the flight of aircraft may take place or exist at such times as may be notified: the Air Navigation Order 2005, SI 2005/1970, art 155(1). As to the meaning of 'notified' see PARA 178 note 6.

4 As to the meaning of 'commander' see PARA 456.

5 As to the meaning of 'appropriate air traffic control unit' see PARA 523 note 3.

6 Air Navigation Order 2005, SI 2005/1970, art 96(6). A person acting in contravention of art 96 is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(ix) Airspace Restrictions/576. Low flying generally.

576. Low flying generally.

Provisions relating to dangerous flying are set out in the Civil Aviation Act 1982 and the Air Navigation Order 2005¹, and provisions relating to minimum altitudes of flight are to be found in special regulations restricting flying² and in the Rules of the Air³. An aircraft must comply with the low flying prohibitions⁴ unless exempted⁵. If an aircraft is flying in circumstances such that more than one of the low flying prohibitions apply, it must fly at the greatest height required by any of the applicable prohibitions⁶.

In general, an aircraft may not be flown below such height as would enable it to make an emergency landing without causing danger to persons or property on the surface in the event of a power unit failure⁷.

Except with the written permission of the Civil Aviation Authority ('CAA')⁸, an aircraft may not be flown closer than 500 feet to any person, vessel, vehicle or structure⁹. This rule does not, however, apply to an aircraft flying under and in accordance with a police air operator's certificate¹⁰, to aircraft taking part in a flying display, air race or contest¹¹, to aircraft landing or taking off accordance with normal aviation practice or air taxiing¹², to gliders while hill-soaring¹³, to aircraft permitted to drop articles or animals in specified circumstances¹⁴, to aircraft flying under and in accordance with an aerial application certificate¹⁵ or to aircraft flying for the purpose of picking up or dropping tow ropes, banners or other articles at an aerodrome¹⁶.

Exemption may be sought from the CAA in respect of any aircraft or classes of aircraft, either absolutely or subject to such conditions as it thinks fit¹⁷.

1 See the Civil Aviation Act 1982 s 81; the Air Navigation Order 2005, SI 2005/1970, art 74; and PARA 524.

2 See PARA 574.

3 See the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 5 (see the text and notes 4-13); and PARAS 577-580. The Rules of the Air Regulations 2007, SI 2007/734, are commonly referred to as the Rules of the Air: see PARA 357.

4 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 5.

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 5(1). As to the exemptions see Sch 1 r 6. As to the classification of aircraft see PARA 360.

6 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 5(2).

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 5(3)(a).

8 As to the CAA see PARA 50 et seq.

9 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 5(3)(b). For general exemptions see PARA 580. As to the penalty for contravention of this rule see PARA 531 note 8. As to the relationship between Sch 1 r 5(1)(e), (2) (d) (see the text and notes 7-11) and local byelaws concerning low flying see *Staden v Tarjanyi* (1980) 78 LGR 614. As to whether frequent low flights over school grounds are a basis for a claim for trespass or nuisance see *Roedean School Ltd v Cornwall Aviation Co Ltd* (1926) Times, 3 July. See also *Lord Bernstein of Leigh v Skyviews and General Ltd* [1978] QB 479, [1977] 2 All ER 902 (there cannot be a successful claim for trespass or nuisance provided the flights are at a reasonable height and comply with the statutory requirements). See further PARAS 577-580, 653, 658.

10 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(e). As to police air operators' certificates see PARAS 99-100.

11 le if the aircraft is flying within a horizontal distance of 1,000 metres of the gathering of persons assembled to witness the event: Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(f). See note 9.

12 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(a)(ii). See note 9. As to the meaning of 'air-taxiing' see PARA 551 note 4.

13 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(g). See note 9.

14 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(j)(i). See note 9; and PARA 538.

15 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(j)(ii). See note 9; and PARA 540.

16 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(h). See note 9.

17 See the Air Navigation Order 2005, SI 2005/1970, art 153; and PARA 353. For further exceptions see PARA 580.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(ix) Airspace Restrictions/577. Minimum flying height over congested areas.

577. Minimum flying height over congested areas.

An aircraft other than a helicopter¹ must not fly over any congested area² of a city, town or settlement either below such height as would permit the aircraft to land clear of the congested area in the event of the failure of a power unit³ or below a height of 1,000 feet above the highest fixed obstacle within a horizontal radius of 600 metres of the aircraft⁴.

The provision relating to the minimum height of 1,000 feet does not apply to: (1) an aircraft flying over a route notified⁵ for these purposes or on a special VFR flight⁶, in either case unless it is landing or taking off⁷; (2) an aircraft flying under and in accordance with the terms of a police air operator's certificate⁸; or (3) a balloon if it is landing because it is becalmed⁹.

1 As to helicopters see PARA 578.

2 As to the meaning of 'congested area' see PARA 378 note 25.

3 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 5(1)(d). If the aircraft is towing a banner, the height is calculated on the basis that the banner is not dropped within the congested area. As to the penalty for contravention of this rule see PARA 531 note 8.

4 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 5(1)(c). See note 3.

5 As to the meaning of 'notified' see PARA 178 note 6.

6 As to the meaning of 'special VFR flight' see PARA 550 note 6.

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(c)(i). Unless the written permission of the Civil Aviation Authority ('CAA') has been obtained, landings may only be made by an aircraft flying under this exemption at a licensed or Government aerodrome: Sch 1 r 6(c)(ii). As to the CAA see PARA 50 et seq. As to licensed and government aerodromes see PARA 178.

8 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(e). As to police air operators' certificates see PARAS 99-100.

9 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(d)(i).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(ix) Airspace Restrictions/578. Minimum flying height of helicopters.

578. Minimum flying height of helicopters.

A helicopter must not be flown below such height as would enable it to make an emergency landing without danger to persons or property on the surface in the event of a power unit failure¹. A helicopter is exempt from the 500 feet rule² when conducting manoeuvres in accordance with normal aviation practice within the boundaries of a licensed or government aerodrome³ or, with the written permission of the Civil Aviation Authority ('CAA')⁴, at other sites⁵.

Except with the written permission of the CAA, a helicopter flying over a congested area⁶ of a city town or settlement may not fly below a height of 1,000 feet above the highest fixed obstacle within a horizontal radius of 600 metres of the helicopter⁷.

Over a specified area of central London⁸, a helicopter must not fly below such height as would enable it to alight clear of the area in the event of the failure of a power unit, except with the permission in writing of the CAA⁹.

1 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 5(3)(a). As to the penalty for contravention of this rule see PARA 531 note 8. Helicopters are not required to alight clear of congested areas in case of engine failure, as are other aircraft (see PARA 577), except in the case of central London (see the text and notes 5-6): see Sch 1 r 6(d)(ii).

2 As to the 500 feet rule see PARA 576.

3 As to licensed and government aerodromes see PARA 178.

4 As to the CAA see PARA 50 et seq.

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(i).

6 As to the meaning of 'congested area' see PARA 378 note 25.

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 5(3)(c). This provision does not apply to a helicopter flying on a route notified for the purposes of r 5, or on a special VFR flight, unless it is landing or taking off, or to a helicopter flying under and in accordance with the terms of a police air operator's certificate: Sch 1 r 6(c). As to the meaning of 'notified' see PARA 178 note 6. As to the meaning of 'special VFR flight' see PARA 550 note 6. As to police air operators' certificates see PARAS 99-100. See also *Dickson v Miln* 1969 SLT 269 (helicopter taking off and landing in congested area).

8 Is an area bounded by straight lines joining Kew Bridge, Brent reservoir, Gospel Oak station, Springfield Park, Bromley-by-Bow station, Hither Green, Herne Hill station, Wimbledon station, Castelnau reservoir and Kew Bridge, excluding so much of the bed of the River Thames as lies within that area between the ordinary high-water marks on each of its banks: Air Navigation (Restriction of Flying) (Specified Area) Regulations 2005, SI 2005/964, reg 2, Schedule.

9 Air Navigation (Restriction of Flying) (Specified Area) Regulations 2005, SI 2005/964, reg 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(ix) Airspace Restrictions/579. Minimum flying height over assemblies.

579. Minimum flying height over assemblies.

An aircraft must not fly over an organised open air assembly¹ of more than 1,000 persons, except with the written permission of the Civil Aviation Authority ('CAA')² below 1,000 feet or below such height as would enable it to land clear of the assembly in the event of a power unit failure³.

An aircraft may not land or take off within 1,000 metres of an organised, open-air assembly of more than 1,000 persons except (1) at an aerodrome⁴, in accordance with procedures notified by the CAA; or (2) at a landing site which is not an aerodrome, in accordance with procedures notified by the CAA and with the written permission of the organiser of the assembly⁵.

An aircraft flying under and in accordance with the terms of a police air operator's certificate⁶ and aircraft taking part in an organised flying event⁷ are generally excepted from the provisions described above⁸.

1 For this purpose, a procession may be an assembly: *DPP v Roffey* (1959) 123 JP 241, DC (aircraft flying within 3,000 feet of H-Bomb protest march).

2 As to the CAA see PARA 50 et seq.

3 Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 5(3)(e). As to the penalty for contravention of this rule see PARA 531 note 8.

4 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 5(3)(f). See note 3. As to the meaning of 'aerodrome' see PARA 175.

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 5(1)(d)(ii).

6 As to police air operators' certificates see PARAS 99-100.

7 Ie such an event as is described in PARA 576 note 11.

8 See the Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(e), (f).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(ix) Airspace Restrictions/580. General exceptions to low flying rules.

580. General exceptions to low flying rules.

Nothing in the rules relating to low flying¹ prohibits any aircraft from flying in accordance with normal aviation practice for the purpose of taking off from, landing at, practising approaches to landing at, or checking navigational aids or procedures at, a government aerodrome² or a licensed aerodrome³ in the United Kingdom⁴ or at any aerodrome in any other country⁵. Nor do the rules relating to low flying apply to captive balloons⁶ and kites⁷.

1 le the Rules of the Air Regulations 2007, SI 2007/734, reg 2, Sch 1 r 5: see PARAS 576-579.

2 As to the meaning of 'government aerodrome' see PARA 178. As to the meaning of 'aerodrome' see PARA 175.

3 As to licensed aerodromes see PARA 226.

4 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the classification of aerodromes see PARA 178.

5 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(a). There is no saving in respect of the use of aerodromes outside these classes, such as private aerodromes in respect of which no licence is in force. Thus, in respect of the use of such aerodromes, care must be taken to avoid a contravention of r 5(1): see PARAS 576-577.

6 As to the meaning of 'captive balloon' see PARA 360 note 5.

7 Rules of the Air Regulations 2007, SI 2007/734, Sch 1 r 6(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(x) Reporting of Occurrences/581. Entries in technical log.

(x) Reporting of Occurrences

581. Entries in technical log.

At the end of every flight by an aircraft registered in the United Kingdom¹ for the purpose of public transport² or aerial work³, the commander⁴ of the aircraft must enter in the technical log⁵ or the approved record⁶ the times at which the aircraft took off and landed, particulars of any defect known to him which affects the airworthiness or safe operation of the aircraft, or a statement that no such defects is known to him, and such other particulars in respect of airworthiness or operation of the aircraft as the Civil Aviation Authority ('CAA')⁷ may require, and he must sign and date the entries⁸.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

2 As to public transport see PARA 363.

3 As to the meaning of 'aerial work' see PARA 364.

4 As to the meaning of 'commander' see PARA 456.

5 As to the technical log see further PARA 408.

6 As to the meaning of 'approved record' see PARA 408 note 1.

7 As to the CAA see PARA 50 et seq.

8 Air Navigation Order 2005, SI 2005/1970, art 15(1), (4). As to the case where one entry may be made after a series of flights see PARA 408 note 6.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(x) Reporting of Occurrences/582. Mandatory reporting of occurrences.

582. Mandatory reporting of occurrences.

Any known reportable occurrence¹ which is of a prescribed description² and which comes to his attention in the exercise of his functions must be reported to the Civil Aviation Authority ('CAA')³ by any of the persons specified in the Air Navigation Order 2005⁴. Such a report must be made within such time, by such means, and must contain such information, as may be prescribed, and must be presented in such form as the CAA may in any particular case approve⁵. The person who reported the occurrence, or some other specified person⁶, must make a further report, in the prescribed manner, containing information in his possession or control and relating to the specific reported occurrence⁷.

A person must not make any report if he knows, or has reason to believe, that it is false in any particular⁸.

The CAA is required to put in place a mechanism to collect, evaluate, process and store occurrences reported in accordance with these provisions⁹. It must store in its databases the reports which it has collected of occurrences, accidents and serious incidents¹⁰, and make all relevant safety-related information stored in the databases available to the competent authorities¹¹ of the other member states and the European Commission¹².

The CAA, having received an occurrence report, must enter it into its databases and notify, whenever necessary, the competent authority of the member state where the occurrence took place, where the aircraft is registered, where the aircraft was manufactured, and where the operator's air operator's certificate was granted¹³. The CAA must provide any entity entrusted with regulating civil aviation safety or with investigating civil aviation accidents and incidents within the Community with access to information on occurrences collected and exchanged in accordance with the above provisions to enable it to draw the safety lessons from the reported occurrences¹⁴.

The CAA and the Chief Inspector of Air Accidents¹⁵ must use any information received in accordance with the terms of these provisions solely for the specified purposes¹⁶. Without prejudice to the rules of criminal law, no proceedings may be instituted in respect of unpremeditated or inadvertent infringements of the law which come to the attention of the relevant authorities only because they have been reported as required¹⁷, except in cases of gross negligence¹⁸. The CAA must also put in place a system of voluntary reporting to collect and analyse information on observed deficiencies in aviation which are not required to be reported under the system of mandatory reporting, but which are perceived by the reporter as an actual or potential hazard¹⁹.

1 As to reportable occurrences see PARA 583.

2 I.e. occurrences which endanger or which, if not corrected, would endanger an aircraft, its occupants or any other person: see the Air Navigation Order 2005, SI 2005/1970, art 142(3). 'Occurrence' means an operational interruption, defect, fault or other irregular circumstance that has or may have influenced flight safety and that has not resulted in an accident or serious incident as those terms are defined in the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 2 (see PARA 602): Air Navigation Order 2005, SI 2005/1970, art 155(1). Without prejudice to the generality of art 142(3), a list of examples of these occurrences is set out in European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) on occurrence reporting in civil aviation Annexes I, II (and their Appendices): Air Navigation Order 2005, SI 2005/1970, art 142(4). Occurrences to be reported are those where the safety of operation was or could have been endangered or which could have led to an unsafe condition: see European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I note 4. If in the view of the reporter an occurrence did not endanger the

safety of the operation but if repeated in different but likely circumstances would create a hazard, then a report should be made: Annex I note 4. What is judged to be reportable on one class of product, part or appliance may not be so on another and the absence or presence of a single factor, human or technical, can transform an occurrence into an accident or serious incident: Annex I note 4. As to reportable occurrences see PARA 583.

3 As to the CAA see PARA 50 et seq.

4 See the Air Navigation Order 2005, SI 2005/1970, art 142(3), (5). As to the persons responsible for reporting occurrences see PARA 584. The objective of art 142 is to contribute to the improvement of air safety by ensuring that relevant information on safety is reported, collected, stored, protected and disseminated: see art 142(1). The sole objective of occurrence reporting is the prevention of accidents and incidents and not to attribute blame or liability: art 142(2).

A person acting in contravention of art 142(5), (6), (7) or (8) is guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.

5 Air Navigation Order 2005, SI 2005/1970, art 142(6). See note 4. As to the time and manner of reporting and the information to be reported see the Air Navigation (General) Regulations 2006, SI 2006/601, reg 14(1)-(3).

6 I.e. one of the persons responsible for reporting the occurrence: see PARA 584.

7 Air Navigation Order 2005, SI 2005/1970, art 142(7). See note 4. See also the Air Navigation (General) Regulations 2006, SI 2006/601, reg 14.

8 Air Navigation Order 2005, SI 2005/1970, art 142(8). A person acting in contravention of art 142(8) is guilty of an offence: see note 4.

9 Air Navigation Order 2005, SI 2005/1970, art 142(9).

10 Air Navigation Order 2005, SI 2005/1970, art 142(10). The CAA must ensure that the databases are compatible with the software developed by the European Commission for the purpose of implementing European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003, p 23) on occurrence reporting in civil aviation: Air Navigation Order 2005, SI 2005/1970, art 142(12). The names or addresses of individual persons must not be recorded on the databases: art 142(16).

11 As to the meaning of 'competent authority' see PARA 415 note 9.

12 Air Navigation Order 2005, SI 2005/1970, art 142(11).

13 Air Navigation Order 2005, SI 2005/1970, art 142(13).

14 Air Navigation Order 2005, SI 2005/1970, art 142(14).

15 As to the Chief Inspector of Air Accidents see PARA 605 note 2.

16 Air Navigation Order 2005, SI 2005/1970, art 142(15).

17 I.e. by European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) art 4, except in cases of gross negligence.

18 Air Navigation Order 2005, SI 2005/1970, art 142(17). The provisions in art 142(15)-(17) apply without prejudice to the right of access to information by judicial authorities: art 142(18).

19 Air Navigation Order 2005, SI 2005/1970, art 142(19). As to such reports see art 142(20)-(21).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(x) Reporting of Occurrences/583. Reportable occurrence.

583. Reportable occurrence.

Specified aircraft operations, maintenance, repair, and manufacture-related occurrences¹, as well as specified air navigation services related occurrences² are to be reported under the requirements³ for mandatory reporting of occurrences⁴. Thus occurrences are reportable relating to (1) aircraft flight operations, covering occurrences relating to the operation of aircraft (such as avoidance manoeuvres, take-off or landing incidents and incidents in flight)⁵, emergencies⁶, crew incapacitation⁷, injury not considered reportable as an accident⁸, meteorological occurrences⁹, security incidents¹⁰ and other occurrences¹¹; (2) aircraft technical matters including structural defects or failures¹², matters relating to systems¹³, propulsion¹⁴ and human factors¹⁵ and other occurrences¹⁶; (3) aircraft maintenance and repair¹⁷; (4) facilities and ground services, relating to aerodromes and aerodrome facilities¹⁸, handling of passengers, baggage and cargo¹⁹, aircraft ground handling and servicing²⁰; and (5) air navigation services and facilities²¹, such as near-collision incidents²², incidents with the potential for collision or near collision²³ and air traffic management specific occurrences²⁴.

The list of reportable occurrences does not include accidents. However, in addition to other requirements covering the notification of accidents²⁵, they should also be recorded in the database in which reports of occurrences are required²⁶ to be stored²⁷.

1 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) on occurrence reporting in civil aviation Annex I. As to the meaning of 'occurrence' see PARA 582 note 2.

2 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex II.

3 See the Air Navigation Order 2005, SI 2005/1970, art 142; and PARA 582.

4 See the Air Navigation Order 2005, SI 2005/1970, art 142(4). Although the majority of reportable occurrences are listed, the list cannot be completely comprehensive; any other occurrences, which are judged by those involved to meet the criteria, should also be reported: European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I note 1, Annex II note 1. As to the persons responsible for reporting occurrences see PARA 584.

5 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para A(i).

6 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para A(ii).

7 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para A(iii).

8 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para A(iv).

9 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para A(v).

10 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para A(vi).

11 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para A(vii).

12 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para B(i).

13 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para B(ii), Appendix.

14 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para B(iii).

15 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para B(iv).

- 16 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para B(v).
- 17 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para C.
- 18 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para D(ii).
- 19 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para D(iii).
- 20 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para D(iv).
- 21 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I para D(i), Annex II.
- 22 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex II para (i).
- 23 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex II para (ii).
- 24 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex II para (iii), Appendix.
- 25 See PARA 598 et seq.
- 26 See European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) art 5(2); the Air Navigation Order 2005, SI 2005/1970, art 142(10); and PARA 582 text and note 10.
- 27 European Parliament and Council Directive 2003/42 (OJ L167, 4.7.2003) Annex I note 2, Annex II note 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(x) Reporting of Occurrences/584. Responsibility for reporting occurrences.

584. Responsibility for reporting occurrences.

Where a reportable occurrence¹ of a prescribed description² has happened which comes to the attention of a person in the exercise of his functions it must be reported to the Civil Aviation Authority ('CAA')³ by every such person who is⁴:

- 451 (1) the operator⁵ and the commander⁶ of a turbine-powered aircraft which has a certificate of airworthiness⁷ issued by the CAA⁸;
- 452 (2) the operator and the commander of an aircraft operated under an air operator's certificate granted by the CAA⁹;
- 453 (3) a person who carries on the business of manufacturing a turbine-powered or a public transport aircraft, or any equipment or part thereof, in the United Kingdom¹⁰;
- 454 (4) a person who carries on the business of maintaining or modifying a turbine-powered aircraft which has a certificate of airworthiness issued by the CAA, and a person who carries on the business of maintaining or modifying any equipment or part of such an aircraft¹¹;
- 455 (5) a person who carries on the business of maintaining or modifying an aircraft, operated under an air operator's certificate¹² granted by the CAA, and a person who carries on the business of maintaining or modifying any equipment or part of such an aircraft¹³;
- 456 (6) a person who signs an airworthiness review certificate, or a certificate of release to service in respect of a turbine-powered aircraft, which has a certificate of airworthiness issued by the CAA, and a person who signs an airworthiness review certificate or a certificate of release to service in respect of any equipment or part of such an aircraft¹⁴;
- 457 (7) a person who signs an airworthiness review certificate, or a certificate of release to service in respect of an aircraft, operated under an air operator's certificate granted by the CAA, and a person who signs an airworthiness review certificate or a certificate of release to service in respect of any equipment or part of such an aircraft¹⁵;
- 458 (8) a person who performs a function which requires him to be authorised by the CAA as an air traffic controller¹⁶ or as a flight information service officer¹⁷;
- 459 (9) a licensee and a manager of a licensed aerodrome or a manager of an airport to which the Community legislation¹⁸ on access for Community air carriers to intra-Community air routes applies¹⁹;
- 460 (10) a person who performs a function in respect of the installation, modification, maintenance, repair, overhaul, flight-checking or inspection of air navigation facilities which are utilised by a person who provides an air traffic control service under an approval issued by the CAA²⁰;
- 461 (11) a person who performs a function in respect of the ground-handling of aircraft, including fuelling, servicing, loadsheet preparation, loading, de-icing and towing at an airport to which the Community legislation²¹ applies²².

1 As to the meaning of 'occurrence' see PARA 582 note 2. As to reportable occurrences see PARA 583.

2 For the prescribed occurrences see PARA 582 note 2.

3 As to the CAA see PARA 50 et seq.

4 Air Navigation Order 2005, SI 2005/1970, art 142(5). A person acting in contravention of art 142(5) is guilty of an offence and liable, on summary conviction, to a fine not exceeding the statutory maximum and, on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both: art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.

5 As to the meaning of 'operator' see PARA 437.

6 As to the meaning of 'commander' see PARA 456.

7 As to certificates of airworthiness see PARAS 376-384.

8 Air Navigation Order 2005, SI 2005/1970, art 142(5)(a).

9 Air Navigation Order 2005, SI 2005/1970, art 142(5)(b).

10 Air Navigation Order 2005, SI 2005/1970, art 142(5)(c). As to the meaning of 'United Kingdom' see PARA 30 note 1.

11 Air Navigation Order 2005, SI 2005/1970, art 142(5)(d).

12 As to air operator's certificates see PARA 99.

13 Air Navigation Order 2005, SI 2005/1970, art 142(5)(e). As to manufacturers' and repairers' liabilities see PARAS 422-424.

14 Air Navigation Order 2005, SI 2005/1970, art 142(5)(f). As to maintenance review see PARAS 406-409; and as to release to service see PARA 428.

15 Air Navigation Order 2005, SI 2005/1970, art 142(5)(g).

16 As to air traffic controllers see PARAS 161-170.

17 Air Navigation Order 2005, SI 2005/1970, art 142(5)(h). As to flight information service officers see PARA 164.

18 I.e EC Council Regulation 2408/92 (OJ L240, 24.8.1992, p 8) on access for Community air carriers to intra-Community air routes applies.

19 Air Navigation Order 2005, SI 2005/1970, art 142(5)(i). As to licensed aerodromes see PARAS 226-227.

20 Air Navigation Order 2005, SI 2005/1970, art 142(5)(j).

21 See note 18.

22 Air Navigation Order 2005, SI 2005/1970, art 142(5)(k).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(x) Reporting of Occurrences/585. Mandatory reporting of birdstrikes.

585. Mandatory reporting of birdstrikes.

The commander¹ of an aircraft must make a report to the Civil Aviation Authority ('CAA')² of any birdstrike occurrence³ which occurs while the aircraft is in flight within the United Kingdom⁴. The report must be made within such time, by such means and must contain such information as may be prescribed and it must be presented in such form as the CAA may in a particular case approve⁵. No person is required to report any occurrence which he has already reported⁶ or which he has reason to believe has been or will be reported by another person to the CAA⁷. A person must not make any report if he knows or has reason to believe that the report is false in any particular⁸.

1 As to the meaning of 'commander' see PARA 456.

2 As to the CAA see PARA 50 et seq.

3 'Birdstrike occurrence' means an incident in flight in which the commander of an aircraft has reason to believe that the aircraft has been in a collision with one or more than one bird: Air Navigation Order 2005, SI 2005/1970, art 143(5).

4 Air Navigation Order 2005, SI 2005/1970, art 143(1). As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 Air Navigation Order 2005, SI 2005/1970, art 143(2). As to the time and manner of reporting and the information to be reported see the Air Navigation (General) Regulations 2006, SI 2006/601, reg 15(1)-(3).

6 Ie under the Air Navigation Order 2005, SI 2005/1970, art 142 (see PARAS 582-584).

7 Air Navigation Order 2005, SI 2005/1970, art 143(3).

8 Air Navigation Order 2005, SI 2005/1970, art 143(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(x) Reporting of Occurrences/586. Notification of births and deaths in aircraft.

586. Notification of births and deaths in aircraft.

If a birth or death occurs in any part of the world in an aircraft registered in the United Kingdom¹ or if the death occurs outside the United Kingdom of a traveller² in such an aircraft who is killed on the journey³ in consequence of an accident, the owner of the aircraft must, as soon as practicable but not later than six months after the occurrence, transmit to the Civil Aviation Authority ('CAA')⁴ a return of such birth or death in the prescribed form⁵. For this purpose, the person in command⁶ of an aircraft in which the birth or death occurs must forthwith record the particulars of it⁷ and must make the record available to the owner as soon as practicable⁸.

Where an aircraft has been bona fide demised, let or hired out for a period exceeding 14 days to any other person by the owner, and no pilot, commander, navigator or operative member of the crew is in the employment of the owner, the obligations described above must be performed by the person to whom the aircraft has been demised, let or hired out and not by the owner⁹.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

2 'Traveller' includes a member of the aircraft's crew: Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 2(6).

3 A journey is deemed to commence when a traveller enters the aircraft for the purpose of the journey, and to continue until he alights from it on the completion of the journey, notwithstanding any intermediate stop or break in the journey: Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 2(2) (amended by SI 1972/323).

4 As to the CAA see PARA 50 et seq.

5 Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 4(1) (amended by SI 1972/323). If the owner does not know any of the necessary particulars, he must transmit as many of them as he can reasonably ascertain: Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 4(1) proviso. For the prescribed forms see Appendices A, B (both amended by SI 1972/323). As to particulars in the case of an illegitimate child see the Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 8. The Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, were made under the Civil Aviation Act 1946 s 43 (repealed), but have effect as if made under the Civil Aviation Act 1982 s 83. Failure to comply with any of the requirements relating to the recording and registration of births and deaths is punishable on summary conviction with a fine not exceeding level 2 on the standard scale: s 83(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see PARA 50 note 8.

The nationality of a child born on an aircraft is discussed elsewhere: see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 26.

6 'Person in command' means, where a person other than the pilot is in command, that person, and in any other case the pilot: Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 2(5).

7 The regulations provide that the particulars are to be recorded in the journey log book or other appropriate document relating to the aircraft. However, there is no longer a requirement to keep a journey log book. As to the necessity to keep log books generally see PARAS 408, 413, 453.

8 Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 4(2) (amended by SI 1972/323). If the person in command does not know and cannot readily ascertain all the particulars, he must

record and make available such particulars as are readily ascertainable: Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 4(2) proviso.

9 Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 4(3).

UPDATE

586 Notification of births and deaths in aircraft

NOTE 5--SI 1948/1411 reg 8 substituted: SI 2009/1892.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(3) MOVEMENT OF AIRCRAFT/(x) Reporting of Occurrences/587. Records of births, deaths and missing persons.

587. Records of births, deaths and missing persons.

The Civil Aviation Authority ('CAA')¹ keeps separate records of births and deaths in aircraft registered in the United Kingdom², and also a record of persons reported to it as missing persons³, that is, persons with respect to whom there are reasonable grounds for believing that they have died in consequence of an accident to an aircraft registered in the United Kingdom⁴; and it must send a certified copy of any entry in these records to the Registrar General for England, Scotland or Northern Ireland as may be appropriate within seven days of the completion of the entry⁵. The CAA may rectify an error or omission in its records⁶.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the registration of aircraft see PARA 367 et seq.

3 See the Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 5 (amended by SI 1972/323). For the form of the records see the Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, Appendices C-E (Appendices C, D amended by SI 1972/323). As to the particulars in the case of illegitimate children see the Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 8.

4 Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 2(4) (amended by SI 1972/323).

5 Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 6 (amended by SI 1972/323). Rules for ascertaining the appropriate registrar are set out in the Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 7 (amended by SI 1972/323). The appropriate registrar must have the certified copies filed and preserved in an Air Register Book of Births and Deaths: Civil Aviation Act 1982 s 83(5). As to the Registrar General see **REGISTRATION CONCERNING THE INDIVIDUAL** vol 39(2) (Reissue) PARA 605 et seq.

6 Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 9(1) (amended by SI 1972/323). Within seven days after correcting an entry the CAA must send a copy of the corrected entry to the appropriate Registrar General: Civil Aviation (Births, Deaths and Missing Persons) Regulations 1948, SI 1948/1411, reg 9(2) (amended by SI 1972/323). The Registrar General must substitute the corrected entry for the corresponding entry which had been made in the Air Register Book of Births and Deaths: Civil Aviation Act 1982 s 83(7).

UPDATE

587 Records of births, deaths and missing persons

NOTE 3--SI 1948/1411 reg 8 substituted: SI 2009/1892.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(4) CHARGES FOR AIR SERVICES/588. Chargeable air services.

(4) CHARGES FOR AIR SERVICES

588. Chargeable air services.

Chargeable air services are those services which are not excepted air services¹ and which fall within the following heads²:

- 462 (1) air traffic services³ provided in respect of the United Kingdom⁴;
- 463 (2) air traffic services which the United Kingdom has undertaken under international arrangements to provide in respect of an area outside the United Kingdom⁵;
- 464 (3) air traffic services which are provided in respect of an area outside the United Kingdom and the charges for which the United Kingdom has undertaken to collect under international arrangements⁶;
- 465 (4) services which are provided by the Civil Aviation Authority ('CAA')⁷ in performing its air navigation functions⁸ and for which Eurocontrol⁹ is to collect charges under the Eurocontrol Agreement¹⁰; and
- 466 (5) air traffic services which do not fall within head (4) above and for which Eurocontrol is to collect charges under the Eurocontrol Agreement¹¹.

The excepted air services are (a) air traffic services provided by the owner or manager of an aerodrome¹² or by his employee¹³; and (b) air traffic services provided on behalf of the owner or manager of an aerodrome (other than a designated aerodrome¹⁴) in circumstances where the person providing the services is not an employee of the owner or manager and the services are provided under a contract or other arrangement made by the owner or manager and the person providing them¹⁵.

The Secretary of State may by order amend the definition of chargeable air services for these purposes¹⁶.

1 See the Transport Act 2000 s 77(3); and the text to notes 12-15.

2 Transport Act 2000 s 77(1).

3 As to the meaning of 'air traffic services' see PARA 34 note 4.

4 Transport Act 2000 s 77(2)(a). As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 Transport Act 2000 s 77(2)(b).

6 Transport Act 2000 s 77(2)(c).

7 As to the CAA see PARA 50 et seq.

8 Ie within the meaning of the Transport Act 2000 Pt I Ch III (ss 66-72): see PARA 58 note 4.

9 As to the meaning of 'Eurocontrol' see PARA 23 note 2. As to Eurocontrol see PARA 23.

10 Transport Act 2000 s 77(2)(d). The 'Eurocontrol Agreement' is the Multilateral Agreement relating to Route Charges (Brussels, 12 February 1981; Misc 21 (1982); Cmnd 8662) or any agreement replacing it (see PARA 23); Transport Act 2000 s 84(3).

11 Transport Act 2000 s 77(2)(e).

12 As to the meaning of 'aerodrome' see PARA 175. 'Manager of an aerodrome' is a person who is in charge of it or holds a licence granted in respect of it by virtue of the Civil Aviation Act 1982 s 60 (see PARAS 26, 353): Transport Act 2000 s 84(4).

13 See the Transport Act 2000 s 77(3)(a). However, the excepted services do not include air traffic services if (1) they are services for which Eurocontrol is to collect charges under the Eurocontrol Agreement; and (2) they are provided by the owner or manager of an aerodrome or by his employee under a contract or other arrangement made by the owner or manager with the CAA, and the CAA in making that contract or other arrangement is acting in pursuance of its air navigation functions (see note 8): Transport Act 2000 s 77(3)(a), (3A) (s 77(3)(a) amended, and s 77(3A) added, by SI 2001/492).

14 'Designated aerodrome' means an aerodrome designated by the Secretary of State by order for this purpose: Transport Act 2000 s 77(4). See the Aerodromes (Designation) (Chargeable Air Services) Order 2001, SI 2001/354 (amended by SI 2008/518). As to the Secretary of State see PARA 33.

15 Transport Act 2000 s 77(3)(b).

16 Transport Act 2000 s 77(5). The power to make an order under s 77(5) is exercisable only after consultation with the CAA and holders of licences under Pt I Ch I (ss 1-40): s 103(11). As to orders see further PARA 34 note 4.

UPDATE

588 Chargeable air services

NOTE 14--SI 2001/354 (as amended) revoked: SI 2009/189.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(4) CHARGES FOR AIR SERVICES/589. Charges for services.

589. Charges for services.

The Civil Aviation Authority ('CAA')¹ may specify (1) the amounts of, or methods of calculating, the charges which are to be paid in respect of chargeable air services² (or of such descriptions of those services as the CAA specifies)³; (2) the operators and owners of aircraft (or descriptions of such operators and owners) who are to pay the charges⁴; (3) the persons (or descriptions of persons) to whom they are to be paid⁵; and (4) the currencies in which they are to be paid⁶.

On or after making such specifications⁷, the CAA may stipulate that (a) charges are to be dispensed with in cases of specified descriptions⁸; (b) interest at a specified rate is to be paid on charges in respect of any period in which they are due but unpaid⁹; (c) interest is to be paid with the charges or separately¹⁰; (d) charges of a specified description are payable elsewhere than in the United Kingdom¹¹; and (e) charges of a specified description are to be disposed of in a specified way when received¹².

Charges of the specified amounts, or calculated in accordance with the specified methods, must be paid in accordance with the specifications which are made¹³. However, if stipulations are made under head (a) above the charges concerned are not to be paid¹⁴; if stipulations are made under head (b) or head (c) above interest must be paid accordingly¹⁵; if stipulations are made under head (d) above the charges concerned are payable accordingly¹⁶; and if stipulations are made under head (e) above the charges concerned must be disposed of accordingly¹⁷.

The CAA must make a specification or stipulation¹⁸ if it thinks it should do so in order for international agreements to which the United Kingdom is a party to be fulfilled¹⁹. In exercising its powers²⁰ the CAA must act in the manner it thinks best calculated to take account of such agreements²¹. The CAA must also exercise its powers in relation to air traffic services which the United Kingdom has undertaken under international arrangements to provide in respect of an area outside the United Kingdom²² if it thinks it should do so in order to enable the provider of the services to be paid for their provision²³.

1 As to the CAA see PARA 50 et seq.

2 As to the meaning of 'chargeable air services' see PARA 588.

3 Transport Act 2000 s 73(1)(a). For examples of the exercise of this power see the Civil Aviation Authority (Navigation Services Charges) Specification 2002; the Civil Aviation Authority (Eurocontrol Charges) Specification 2003; and the Civil Aviation Authority (Denmark and Iceland Charges) Specification 2003 (all of which are published in the CAA's Official Record Series 7).

4 Transport Act 2000 s 73(1)(b). See note 3.

5 Transport Act 2000 s 73(1)(c). See note 3. For the purposes of s 73(1)(c), 'persons' include (1) Eurocontrol and other international organisations; and (2) governments of countries or territories outside the United Kingdom: s 73(9). As to the meaning of 'Eurocontrol' see PARA 23 note 2. As to Eurocontrol see PARA 23. As to the meaning of 'United Kingdom' see PARA 30 note 1.

6 Transport Act 2000 s 73(1)(d). See note 3.

7 ie under the Transport Act 2000 s 73(1); see the text to notes 1-6.

8 Transport Act 2000 s 73(2)(a).

9 Transport Act 2000 s 73(2)(b).

10 Transport Act 2000 s 73(2)(c).

11 Transport Act 2000 s 73(2)(d).

12 Transport Act 2000 s 73(2)(e).

13 Transport Act 2000 s 73(3). The reference in the text to specifications is a reference to specifications made under s 73(1): see the text to notes 1-6. Section 73(3)-(7) has effect subject to s 74 (see PARA 590): s 73(8).

14 Transport Act 2000 s 73(4). See note 13.

15 Transport Act 2000 s 73(5). See note 13.

16 Transport Act 2000 s 73(6). See note 13.

17 Transport Act 2000 s 73(7). See note 13.

18 Ie under the Transport Act 2000 s 73: see the text and notes 1-17.

19 Transport Act 2000 s 79(1)(a).

20 Ie under the Transport Act 2000 s 73: see the text and notes 1-17.

21 Transport Act 2000 s 79(1)(b).

22 Ie services falling within the Transport Act 2000 s 77(2)(b): see PARA 588 head (2).

23 Transport Act 2000 s 79(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(4) CHARGES FOR AIR SERVICES/590. Making of specifications.

590. Making of specifications.

If the Civil Aviation Authority ('CAA')¹ makes specifications or stipulations², it must publish a notice containing them and they become effective as provided in the published notice³. The CAA may amend or revoke any specifications or stipulations published and, if it does so, it must publish a notice containing any amendment or revocation and the amendment or revocation becomes effective as provided in the published notice⁴. An amendment or revocation does not affect any liability incurred before the amendment or revocation becomes effective⁵. Publication must be made in the London Gazette, the Edinburgh Gazette and the Belfast Gazette, or in such other manner as the Secretary of State⁶ may provide by order⁷.

1 As to the CAA see PARA 50 et seq.

2 I.e. under the Transport Act 2000 s 73: see PARA 589.

3 Transport Act 2000 s 74(1). See further PARA 589 note 3.

4 Transport Act 2000 s 74(2). See further PARA 589 note 3.

5 Transport Act 2000 s 74(3).

6 As to the Secretary of State see PARA 33.

7 Transport Act 2000 s 74(4). Directions must be published in the Official Record of the CAA: Civil Aviation (Publication of Directions) Regulations 2001, SI 2001/353, reg 2. As to the Official Record see PARA 98 note 1.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(4) CHARGES FOR AIR SERVICES/591. Amounts and methods specified.

591. Amounts and methods specified.

The Civil Aviation Authority ('CAA')¹ may specify in relation to charges for services² (1) different amounts or methods in respect of different descriptions of services³; (2) different amounts or methods in respect of different classes or descriptions of aircraft⁴; (3) different amounts or methods in respect of different circumstances in which aircraft are used⁵. In specifying amounts or methods the CAA must have regard to⁶:

- 467 (a) tariffs which are approved under any international agreement to which the United Kingdom⁷ is a party⁸;
- 468 (b) tariffs which in the CAA's opinion are likely to be approved under any such agreement before or within one month after the date when the specifications are to take effect⁹;
- 469 (c) tariffs which in the CAA's opinion are likely to be approved, before or within one month after the date when the specifications are to take effect, under any international agreement to which the United Kingdom is likely to be a party before or within one month after that date¹⁰.

Methods may be expressed by reference to such factors (including exchange rates between currencies) as the CAA thinks fit¹¹.

A description of services may be expressed by reference to such factors (including the area in respect of which they are provided) as the CAA thinks fit¹². A description of operators and owners may be so general as to refer to all operators and owners¹³. Owners and operators may be specified (or of a description specified) if the services concerned are available for the aircraft concerned, and it is immaterial whether or not the services are actually used or could be used with the equipment installed in the aircraft¹⁴.

1 As to the CAA see PARA 50 et seq.

2 Transport Act 2000 s 75(1). Section 75 applies for the purposes of specifications under s 73(1): see PARA 589.

3 Transport Act 2000 s 75(2)(a).

4 Transport Act 2000 s 75(2)(b).

5 Transport Act 2000 s 75(2)(c).

6 Transport Act 2000 s 75(3).

7 As to the meaning of 'United Kingdom' see PARA 30 note 1.

8 Transport Act 2000 s 75(3)(a).

9 Transport Act 2000 s 75(3)(b).

10 Transport Act 2000 s 75(3)(c).

11 Transport Act 2000 s 75(4).

12 Transport Act 2000 s 75(5).

13 Transport Act 2000 s 75(6).

14 Transport Act 2000 s 75(7).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(4) CHARGES FOR AIR SERVICES/592. Liability and recovery.

592. Liability and recovery.

Liability to pay a charge¹ arises whether or not² (1) the aircraft concerned is registered in the United Kingdom³; (2) it is in the United Kingdom when the services concerned are provided⁴; (3) the services concerned are provided from a place in the United Kingdom⁵. A charge⁶ is recoverable in the United Kingdom wherever it is payable (without prejudice to its recovery elsewhere)⁷. A court in any part of the United Kingdom has jurisdiction to hear and determine (a) a claim for a charge or interest⁸; and (b) a claim, by a person appearing to the court to have an interest in the matter, that a charge which must be disposed of in a particular way⁹ has not been disposed of in that way¹⁰.

1 Ie by virtue of the Transport Act 2000 s 73: see PARA 589.

2 Transport Act 2000 s 76(1).

3 Transport Act 2000 s 76(1)(a). As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 Transport Act 2000 s 76(1)(b).

5 Transport Act 2000 s 76(1)(c).

6 Ie payable by virtue of the Transport Act 2000 s 73: see PARA 589.

7 Transport Act 2000 s 76(2).

8 See note 6.

9 Ie by virtue of the Transport Act 2000 s 73: see PARA 589.

10 Transport Act 2000 s 76(3). This applies even if the person against whom the claim is made is not resident within the court's jurisdiction: s 76(4).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(4) CHARGES FOR AIR SERVICES/593. Amounts for recovery.

593. Amounts for recovery.

If the amount¹ of a charge is specified² in respect of certain services³ and, under the Eurocontrol Agreement⁴, Eurocontrol⁵ is to collect a charge in respect of the specification and publication of the amount of the charge and its recovery⁶, then in specifying the amount of the charge the Civil Aviation Authority ('CAA')⁷ may include an amount in respect of the specification and publication of the amount of the charge and its recovery⁸.

1 For these purposes, references to an amount include references to a method of calculating an amount: Transport Act 2000 s 78(3).

2 Ie under the Transport Act 2000 s 73(1): see PARA 589.

3 Ie a service falling within the Transport Act 2000 s 77(2)(d) or s 77(2)(e): see PARA 588 heads (4), (5).

4 As to the meaning of 'Eurocontrol Agreement' see PARA 588 note 10.

5 As to the meaning of 'Eurocontrol' see PARA 23 note 2. As to Eurocontrol see PARA 23.

6 Transport Act 2000 s 78(1).

7 As to the CAA see PARA 50 et seq.

8 Transport Act 2000 s 78(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(4) CHARGES FOR AIR SERVICES/594. Secretary of State's duties.

594. Secretary of State's duties.

If information is given to the Secretary of State¹ by the Civil Aviation Authority ('CAA')² concerning the charges that it would like to be paid in respect of certain chargeable air services³, he must (so far as practicable) ensure that the information is given to Eurocontrol⁴. If information is given to the Secretary of State by an air traffic services licence holder⁵ concerning the charges it would like to be paid in respect of certain chargeable air services which it provides⁶, he must (so far as practicable) ensure that the information is given to Eurocontrol⁷. If money is received by the government of the United Kingdom⁸ from Eurocontrol in respect of a chargeable air service⁹, the Secretary of State must (so far as practicable) ensure that the money is paid to the person who provided the service¹⁰. If money falls to be paid by Eurocontrol in respect of a chargeable air service¹¹, the Secretary of State must (so far as practicable) ensure that the money falls to be paid by Eurocontrol to the person who provided the service¹².

1 As to the Secretary of State see PARA 33.

2 As to the CAA see PARA 50 et seq.

3 I.e. services which fall within the Transport Act 2000 s 77(2)(d): see PARA 588 head (4). As to the meaning of 'chargeable air services' see PARA 588.

4 Transport Act 2000 s 80(1). As to the meaning of 'Eurocontrol' see PARA 23 note 2. As to Eurocontrol see PARA 23.

5 As to the meaning of 'licence holder' see PARA 139 note 4; definition applied by the Transport Act 2000 s 84(5). As to the licensing of air traffic services see PARA 139 et seq.

6 I.e. services which fall within the Transport Act 2000 s 77(2)(e): see PARA 588 head (5).

7 Transport Act 2000 s 80(2). This does not apply if the CAA tells the Secretary of State that giving the information to Eurocontrol could result in the licence holder being paid charges whose calculation was in contravention of the provisions of the licence: s 80(3).

8 The reference to money being received by the government of the United Kingdom is a reference to money being received by a person on behalf of that government: Transport Act 2000 s 80(6). As to the meaning of 'United Kingdom' see PARA 30 note 1.

9 I.e. a service falling within the Transport Act 2000 s 77(2)(d) or s 77(2)(e): see PARA 588 heads (4), (5).

10 Transport Act 2000 s 80(4).

11 See note 9.

12 Transport Act 2000 s 80(5).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(4) CHARGES FOR AIR SERVICES/595. Records.

595. Records.

The Secretary of State¹ may make regulations in order to facilitate the assessment and collection of charges². The regulations may require operators or owners of aircraft or managers of aerodromes³:

- 470 (1) to make such records⁴ of the movements of aircraft, and of such other particulars relating to aircraft, as are specified⁵;
- 471 (2) to preserve the records for a specified period⁶;
- 472 (3) to produce relevant records⁷ for inspection by specified persons at specified times⁸; and
- 473 (4) to provide specified particulars of relevant records to specified persons⁹.

The persons who may be specified under head (3) or head (4) above are (a) in the case of charges payable to Eurocontrol¹⁰, officers of the Civil Aviation Authority ('CAA')¹¹ or of Eurocontrol¹²; (b) in the case of other charges, officers of the CAA or of the organisation, government or other person to whom the charges are payable¹³.

The requirements set out above may be imposed on the operator or owner of an aircraft whether or not (i) it is registered in the United Kingdom¹⁴; (ii) it is in the United Kingdom when the services concerned are provided¹⁵; (iii) the services concerned are provided from a place in the United Kingdom¹⁶.

Certain records may be used as evidence in any legal proceedings¹⁷.

1 As to the Secretary of State see PARA 33.

2 Transport Act 2000 s 81(1). The charges referred to in the text are those payable under s 73: see PARA 589. As to the regulations that have been made see the Civil Aviation (Chargeable Air Services) (Records) Regulations 2001, SI 2001/399. As to the making of regulations see further PARA 34 note 4.

3 Transport Act 2000 s 81(2). As to the meaning of 'aerodrome' see PARA 175. As to the meaning of 'manager of an aerodrome' see PARA 588 note 12.

4 'Record' includes (in addition to a record in writing) (1) a disc, tape, sound-track or other device in which sounds or signals are embodied so as to be capable of being reproduced from it (with or without the aid of some other instrument); (2) a film, tape or other device in which visual images are embodied so as to be capable of being reproduced from it (with or without the aid of some other instrument); (3) a photograph: Transport Act 2000 s 81(6).

5 Transport Act 2000 s 81(2)(a). See the Civil Aviation (Chargeable Air Services) (Records) Regulations 2001, SI 2001/399, reg 3(1).

6 Transport Act 2000 s 81(2)(b). See the Civil Aviation (Chargeable Air Services) (Records) Regulations 2001, SI 2001/399, reg 3(2), (3).

7 'Relevant records' are records required to be preserved by the operators, owners or managers by the regulations or an air navigation order: Transport Act 2000 s 81(3). For these purposes, an air navigation order is an Order in Council under the Civil Aviation Act 1982 s 60 (see PARAS 26, 353): Transport Act 2000 s 81(7). As to air navigation orders see PARA 353.

8 Transport Act 2000 s 81(2)(c).

9 Transport Act 2000 s 81(2)(d). See the Civil Aviation (Chargeable Air Services) (Records) Regulations 2001, SI 2001/399, reg 3(4), (5).

- 10 As to the meaning of 'Eurocontrol' see PARA 23 note 2. As to Eurocontrol see PARA 23.
- 11 As to the CAA see PARA 50 et seq.
- 12 Transport Act 2000 s 81(4)(a). For the purposes of s 81(4), a reference to officers of the CAA includes a reference to persons authorised to act as such officers; and a reference to officers of Eurocontrol includes a reference to persons authorised to act as such officers: s 81(8).
- 13 Transport Act 2000 s 81(4)(b).
- 14 Transport Act 2000 s 81(5)(a). As to the meaning of 'United Kingdom' see PARA 30 note 1.
- 15 Transport Act 2000 s 81(5)(b).
- 16 Transport Act 2000 s 81(5)(c).
- 17 See the Civil Aviation Act 1982 s 96(2), (3); and PARA 617.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(4) CHARGES FOR AIR SERVICES/596. Offences relating to records.

596. Offences relating to records.

A person commits an offence if without reasonable excuse he fails to comply with a requirement of the regulations relating to records¹. A person commits an offence if he is in possession of information provided to him or obtained by him under the regulations and he discloses the information otherwise than²:

- 474 (1) with the consent of the person by whom it was provided or from whom it was obtained³;
- 475 (2) for the purposes of the regulations⁴;
- 476 (3) for the purposes of any proceedings arising out of the provisions relating to charges for air services⁵;
- 477 (4) for the purposes of any criminal proceedings (however arising)⁶;
- 478 (5) for the purposes of any proceedings relating to claims against Eurocontrol⁷;
- 479 (6) for the purposes of a public inquiry or investigation held or carried out under regulations relating to the investigation of accidents⁸; or
- 480 (7) for the purposes of a report of any proceedings, inquiry or investigation mentioned above⁹.

A person commits an offence if in providing particulars¹⁰ he provides particulars which he knows are false in a material particular, or he recklessly provides particulars which are false in a material particular¹¹.

1 Transport Act 2000 s 82(1). The regulations referred to in the text are regulations made under s 81: see PARA 595. As to the regulations made see the Civil Aviation (Chargeable Air Services) (Records) Regulations 2001, SI 2001/399; and PARA 595. A person who commits an offence under the Transport Act 2000 s 82(1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 82(4). As to the standard scale see PARA 50 note 8.

2 Transport Act 2000 s 82(2). A person who commits an offence under s 82(2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months or to both: s 82(5).

3 Transport Act 2000 s 82(2)(a).

4 Transport Act 2000 s 82(2)(b).

5 Transport Act 2000 s 82(2)(c). The provisions referred to in the text are those of Pt I Ch IV (ss 73-84).

6 Transport Act 2000 s 82(2)(d).

7 Transport Act 2000 s 82(2)(e). Proceedings against Eurocontrol are brought by virtue of the Civil Aviation Act 1982 s 24, Sch 4 para 3: see PARA 23. As to the meaning of 'Eurocontrol' see PARA 23 note 2. As to Eurocontrol see PARA 23.

8 Transport Act 2000 s 82(2)(f). The regulations referred to in the text are those made under the Civil Aviation Act 1982 s 75: see PARA 600 et seq.

9 Transport Act 2000 s 82(2)(g).

10 Ie under a provision contained in regulations made by virtue of the Transport Act 2000 s 81(2)(d): see PARA 595 head (4).

11 Transport Act 2000 s 82(3). A person who commits an offence under s 82(3) is liable (1) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both; (2) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both: s 82(6). As to the statutory maximum see PARA 43 note 12.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/7. OPERATION OF AIRCRAFT/(4) CHARGES FOR AIR SERVICES/597. Detention and sale.

597. Detention and sale.

The Secretary of State¹ may make regulations² containing:

- 481 (1) provision which, in the case of default by an operator in paying a charge³, authorises the detention (pending payment) of certain aircraft⁴;
- 482 (2) provision which, in the case of default by an operator in complying with a requirement⁵ to produce records for inspection or provide particulars of records, authorises the detention (pending compliance) of any aircraft of which he is the operator when detention begins⁶;
- 483 (3) provision which authorises the sale of any detained aircraft if the default is not remedied within a specified period⁷.

Such regulations may:

- 484 (a) provide that detention (or continued detention) is authorised only in specified circumstances or at specified places⁸;
- 485 (b) provide that in specified circumstances detention is authorised only if a specified person consents⁹;
- 486 (c) provide that sale is authorised only in specified circumstances (which may relate to the court's consent, to be given only in specified circumstances)¹⁰;
- 487 (d) specify the descriptions of person authorised to detain or sell aircraft¹¹;
- 488 (e) provide for the power of detention or sale to extend to other matters (such as the aircraft's equipment)¹²;
- 489 (f) provide for the application of the proceeds of sale¹³;
- 490 (g) provide for the proceeds of sale to be applied in a specified order¹⁴;
- 491 (h) make provision corresponding to any provision made by or under the Civil Aviation Act 1982 relating to the detention and sale of aircraft for unpaid airport charges¹⁵;
- 492 (i) generally make such provision as the Secretary of State thinks is necessary or expedient to secure detention or sale¹⁶.

Regulations have been made with regard to charges other than those payable to Eurocontrol¹⁷, which provide that where default is made in payment of charges the Civil Aviation Authority ('CAA') or an authorised person¹⁸ may take such steps as are necessary to detain, pending payment, either the aircraft in respect of which the charges were incurred (whether or not they were incurred by the person who is the operator of the aircraft at the time when the detention begins) or any other aircraft of which the person in default is the operator at the time when the detention begins; and that, if the charges are not paid within 56 days of the date when the detention begins, the CAA may sell the aircraft in order to satisfy the charges¹⁹. These powers extend to the equipment of the aircraft and any stores for use in connection with its operation (being equipment and stores carried in the aircraft) whether or not the property of the person who is its operator²⁰; and the power of detention also extends to any aircraft documents carried in it²¹. However, an aircraft must not be detained, or continue to be detained, by reason of any default in the payment of charges if the operator of the aircraft, or any other person claiming an interest in it, disputes that the charges are due and gives to the CAA, pending the determination of the dispute, sufficient security for the payment of the charges which are

alleged to be due²². Furthermore, the CAA must not sell an aircraft without the leave of the court²³.

Similar regulations have been made with regard to charges payable to Eurocontrol²⁴.

1 As to the Secretary of State see PARA 33.

2 Transport Act 2000 s 83(1). As to the regulations that have been made see the Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft) Regulations 2001, SI 2001/493; the Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft for Eurocontrol) Regulations 2001, SI 2001/494; and the text and notes 17-24. As to the making of regulations see further PARA 34 note 4.

3 I.e. a charge payable by virtue of the Transport Act 2000 s 73: see PARA 589.

4 Transport Act 2000 s 83(1)(a). This power enables the detention of the following aircraft (1) the aircraft in respect of which the charge was incurred (whether or not the person who is the operator of the aircraft when detention begins is the defaulter); (2) any aircraft of which the defaulter is the operator when detention begins: s 83(1)(a), (2). As to the right of the Civil Aviation Authority ('CAA') to detain an aircraft operated at the time of the detention by a successor to the person in default see *R v Civil Aviation Authority, ex p Emery Air Freight Corp'n* (1988) 1 S & B Av R IV/105, (1988) Times, 13 January, CA (decided under the Civil Aviation Act 1982 s 74(4)(a) (repealed), which was similarly worded). As to the CAA see PARA 50 et seq.

5 I.e. imposed by regulations made under the Transport Act 2000 s 81: see PARA 595.

6 Transport Act 2000 s 83(1)(b).

7 Transport Act 2000 s 83(1)(c).

8 Transport Act 2000 s 83(3)(a).

9 Transport Act 2000 s 83(3)(b).

10 Transport Act 2000 s 83(3)(c).

11 Transport Act 2000 s 83(3)(d).

12 Transport Act 2000 s 83(3)(e).

13 Transport Act 2000 s 83(3)(f).

14 Transport Act 2000 s 83(3)(g).

15 Transport Act 2000 s 83(3)(h). As to the detention and sale of aircraft for unpaid airport charges see the Civil Aviation Act 1982 s 88; and PARAS 257-258.

16 Transport Act 2000 s 83(3)(i).

17 I.e. the Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft) Regulations 2001, SI 2001/493. As to the meaning of 'Eurocontrol' see PARA 23 note 2. As to Eurocontrol see PARA 23.

18 'Authorised person' means any constable or person authorised by the CAA (whether by name or by class or description) either generally or in relation to a particular case or class of cases pursuant to the Civil Aviation Act 1982 s 2, Sch 1 para 15 (see PARA 50): see the Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft) Regulations 2001, SI 2001/493, reg 2.

19 Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft) Regulations 2001, SI 2001/493, reg 3. The power of detention may be exercised on any occasion when the aircraft is on any aerodrome to which the Civil Aviation Act 1982 s 88 applies (see PARA 257) or Belfast International Airport, Belfast City Airport or Eglinton Airport: Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft) Regulations 2001, SI 2001/493, reg 10.

20 See the Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft) Regulations 2001, SI 2001/493, reg 8.

21 See the Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft) Regulations 2001, SI 2001/493, reg 9. Any such documents may, if the aircraft is sold under these provisions, be transferred by the CAA to the purchaser: see reg 9.

22 Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft) Regulations 2001, SI 2001/493, reg 4. If the aircraft is detained on the basis that it is the aircraft in respect of which the charges were incurred, the complainant may also dispute that the charges were incurred in respect of that aircraft: see reg 4.

23 See the Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft) Regulations 2001, SI 2001/493, regs 5, 6, 7, Schedule.

24 See the Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft for Eurocontrol) Regulations 2001, SI 2001/494.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/ (1) INTRODUCTION/598. Necessity under international law to provide for accident investigation.

8. ACCIDENTS AND INCIDENTS

(1) INTRODUCTION

598. Necessity under international law to provide for accident investigation.

The Chicago Convention¹ provides that in the event of an accident to an aircraft of a contracting state occurring in the territory of another contracting state, and involving death or serious injury, or indicating serious technical defect in the aircraft or air navigation facilities, the state in which the accident occurs will institute an inquiry into the circumstances of the accident in accordance, in so far as its laws permit, with the procedure recommended by the International Civil Aviation Organisation ('ICAO')². The state in which the aircraft is registered must be given the opportunity of appointing observers to be present at the inquiry, and the state holding the inquiry must communicate the report and findings in the matter to that state³. The recommended procedures concerning aircraft accident and incident investigation are set out in Annex 13 to the Chicago Convention⁴.

1 The Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742): see PARA 2 et seq.

2 Chicago Convention art 26. As to ICAO see PARA 20.

3 Chicago Convention art 26.

4 The Council of ICAO adopted the Chicago Convention Annex 13 on 11 April 1951. The ninth edition of Annex 13 (July 2001) supersedes all previous editions of the Annex. As to the annexes to the Chicago Convention see PARA 6 note 5.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/ (1) INTRODUCTION/599. Application of wreck and salvage law.

599. Application of wreck and salvage law.

Any services rendered in assisting, or in saving life from, or in saving the cargo or apparel of an aircraft in, on or over the sea or any tidal water, or on or over the shores of the sea or any tidal water, are deemed to be salvage services in all cases in which they would have been salvage services if they had been rendered in relation to a vessel¹. Where salvage services are rendered by an aircraft to any property or person, the owner of the aircraft is entitled to the same reward for those services as he would have been entitled to had the aircraft been a vessel². The position is the same notwithstanding that the aircraft concerned is a foreign aircraft and notwithstanding that the services in question are rendered elsewhere than within the limits of the territorial waters adjacent to any part of Her Majesty's dominions³.

Those provisions of the merchant shipping legislation⁴ and of any other Acts⁵ which relate to wreck and salvage have, with necessary exceptions, adaptations and modifications, been applied in relation to aircraft as they apply in relation to vessels⁶, and jurisdiction over salvage claims in relation to aircraft is conferred on all courts having Admiralty jurisdiction⁷.

The master of a ship on receiving at sea a signal of distress from an aircraft or information from any source that an aircraft is in distress must proceed with all speed to the assistance of the persons in distress informing them, if possible, that he is doing so, unless he is unable, or in the special circumstances of the case he considers it unreasonable or unnecessary to do so, or he is released from this duty⁸.

1 Civil Aviation Act 1982 s 87(1). See further **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 114. As to tidal waters see generally **WATER AND WATERWAYS** vol 100 (2009) PARA 71 et seq. For salvage law see **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 876 et seq.

2 Civil Aviation Act 1982 s 87(2).

3 Civil Aviation Act 1982 s 87(3).

4 See the Merchant Shipping Act 1995 Pt IX (ss 224-255), which replaced the Merchant Shipping Act 1894 Pt IX (ss 510-571) (repealed); and **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 876 et seq.

5 For these purposes, 'Act' includes any local or special Act and any provisions of the Harbours, Docks and Piers Clauses Act 1847, as incorporated with any local or special Act, whenever passed: Civil Aviation Act 1982 s 87(5)(b). Any provisions of an Act which relate to vessels laid by or neglected as unfit for sea service are deemed to be provisions relating to wreck: s 87(5)(a).

6 See the Civil Aviation Act 1982 s 87(4); the Aircraft (Wreck and Salvage) Order 1938, SI 1938/136 (amended by SI 1964/489); and the Interpretation Act 1978 s 17(2)(a). The Aircraft (Wreck and Salvage) Order 1938, SI 1938/136, has effect as if made under the Civil Aviation Act 1982 s 87 by virtue of s 105(3).

7 See the Civil Aviation Act 1982 s 91; and PARA 615.

8 Merchant Shipping Act 1995 s 93(1) (amended by SI 1998/1691). A master may be released from the duty imposed if he is informed by the persons in distress, or by the master of any ship that has reached the persons in distress, that assistance is no longer required: Merchant Shipping Act 1995 s 93(5) (amended by SI 1998/1691). See further **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 448.

UPDATE

599 Application of wreck and salvage law

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/ (1) INTRODUCTION/600. Power of the Secretary of State to make regulations for accident investigation.

600. Power of the Secretary of State to make regulations for accident investigation.

The Secretary of State¹ may by regulations² make such provision as appears to him to be requisite or expedient³ (1) for the investigation of any accident⁴ arising out of or in the course of air navigation, and either occurring in or over the United Kingdom⁵ or occurring elsewhere to aircraft registered in the United Kingdom⁶; and (2) for carrying out any Annex to the Chicago Convention⁷ as it has effect from time to time with any amendment made in accordance with the Convention⁸. The power to make regulations includes power to make provision for the purpose of implementing the Community obligations of the United Kingdom⁹, and for the purpose of dealing with matters arising out of or related to any such obligation¹⁰.

If any person contravenes or fails to comply with any regulations made under this power he is liable, on summary conviction, to a fine or to imprisonment¹¹.

1 As to the Secretary of State see PARA 33.

2 Ie regulations made under the Civil Aviation Act 1982 s 75. As to the regulations that have been made see the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798; and PARA 602 et seq.

3 Civil Aviation Act 1982 s 75(1). This provision is expressed to be subject to s 60: see PARA 353. Section 75 does not limit the powers of any authority under the Merchant Shipping Act 1995 ss 245-247, 252-254 (see **SHIPPING AND MARITIME LAW**): Civil Aviation Act 1982 s 75(6) (amended by the Merchant Shipping Act 1995 s 314(2), Sch 13 para 64(a)). The Civil Aviation Act 1982 s 75 is extended with modifications to certain overseas territories: see the Civil Aviation Act 1982 (Overseas Territories) Order 2001, SI 2001/1452.

Without prejudice to the generality of the Civil Aviation Act 1982 s 75(1), regulations may contain provisions:

- 45 (1) requiring notice to be given of any such accident as is mentioned in s 75(1)(a) (see head (1) in the text) in such manner and by such persons as may be specified in the regulations (s 75(3)(a));
- 46 (2) applying any of the provisions of the Notice of Accidents Act 1894 s 3 (repealed with savings) (with or without modifications) for the purposes of any investigations held in accordance with the regulations or any inquiries undertaken in accordance with the regulations with a view to determining whether any such investigation should be held (Civil Aviation Act 1982 s 75(3)(b); Transport and Works Act 1992 s 68(2));
- 47 (3) prohibiting, pending investigation, access to or interference with aircraft to which an accident has occurred, and authorising any person so far as may be necessary for the purposes of an investigation, or for the purpose of determining whether an investigation should be held, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such aircraft and any other aircraft (Civil Aviation Act 1982 s 75(3)(c));
- 48 (4) authorising or requiring the cancellation, suspension, endorsement or surrender of any licence or certificate granted under an air navigation order (ie an Order in Council under s 60: see PARA 353) or an order under s 62 (repealed) where it appears on an investigation that the licence or certificate ought to be cancelled, suspended, endorsed or surrendered and requiring the production of any such licence or certificate for the purpose of being so dealt with (s 75(3)(d)).

4 The Civil Aviation Act 1982 provides that the regulations may define 'accident' so as to correspond to the meaning adopted for the time being in the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742) Annex 13: Civil Aviation Act 1982 s 75(2)(a). See note 8. For the purposes of s 75, 'accident' is to be construed as including any fortuitous or unexpected event by which the safety of an aircraft or any person is threatened: s 75(4). See further PARA 602. As to the Chicago Convention see PARA 2 et seq. As to Annex 13 see PARA 598.

5 As to the meaning of 'United Kingdom' see PARA 30 note 1.

6 See the Civil Aviation Act 1982 s 75(1)(a).

7 It being an Annex adopted in accordance with the Chicago Convention and relating to the investigation of accidents involving aircraft: see PARAS 6 note 5, 598.

8 Civil Aviation Act 1982 s 75(1)(b). The provision authorised includes provision with respect to any of the following matters:

49 (1) the definition of 'accident' for these purposes so as to correspond to the meaning adopted for the time being in the Chicago Convention Annex 13 (see note 4) (see the Civil Aviation Act 1982 s 75(2)(a));

50 (2) the participation of any persons authorised for the purpose in accordance with the regulations in any investigation held in accordance with the requirements of the Chicago Convention Annex 13 by the competent authorities of any other state (see the Civil Aviation Act 1982 s 75(2)(b)); and

51 (3) the investigation of any accident other than one to which head (1) in the text applies for the purpose of securing any information, articles or other material which it is the duty of the United Kingdom in accordance with any requirements of the Chicago Convention Annex 13 to furnish to any other state (see the Civil Aviation Act 1982 s 75(2)(c)).

9 Civil Aviation Act 1982 s 75(1A)(a) (s 75(1A) added by SI 1996/76). The Community obligations of the United Kingdom are obligations under EC Council Directive 94/56 (OJ L319, 12.2.94, p 1) (corrected by OJ L191, 12.8.95, p 39) establishing the fundamental principles governing the investigation of civil aviation accidents and incidents: see the Civil Aviation Act 1982 s 75(1A)(a) (as so added).

10 Civil Aviation Act 1982 s 75(1A)(b) (as added: see note 9).

11 Civil Aviation Act 1982 s 75(5). The fine must not exceed level 5 on the standard scale, and the term of imprisonment must not exceed three months: see s 75(5) (amended by virtue of the Criminal Justice Act 1982 s 46). As to the standard scale see PARA 50 note 8. As to proceedings relating to aircraft accidents see PARA 601. As from a day to be appointed, the maximum term of imprisonment is increased from three months to 51 weeks: Civil Aviation Act 1982 s 75(5) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 30(1), (3)). At the date at which this volume states the law, no such day had been appointed.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/ (1) INTRODUCTION/601. Proceedings relating to aircraft accidents.

601. Proceedings relating to aircraft accidents.

Summary proceedings for an offence against an air navigation order¹ or any regulations made by virtue of such an order may be instituted at any time within 12 months from the commission of the offence if it was committed in connection with the flight² of an aircraft in the course of which an accident³ occurred, and not more than six months after the commission of the offence if either public notice has been given that an investigation is being carried out or a public inquiry has been directed to be held⁴.

1 Ie an Order in Council under the Civil Aviation Act 1982 s 60: see PARA 353.

2 For the purposes of accident investigation, the 'flight' of an aircraft is deemed to include any period from the moment when the power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run (if any) at the termination of that flight ends: Civil Aviation Act 1982 s 61(4).

3 As to the meaning of 'accident' see PARA 600 note 4; definition applied by the Civil Aviation Act 1982 s 61(4).

4 See the Civil Aviation Act 1982 s 61(3). This is expressed to be without prejudice to the Magistrates' Courts Act 1980 s 127(2) (no time limit for offences triable either way: see **MAGISTRATES** vol 29(2) (Reissue) PARA 589). The fact that a direction has been given on any date may be proved by producing a certificate to that effect purporting to be signed by an officer of the Secretary of State: Civil Aviation Act 1982 s 61(5). As to the Secretary of State see PARA 33.

Section 61 is extended with modifications to certain overseas territories: see the Civil Aviation Act 1982 (Overseas Territories) Order 2001, SI 2001/1452.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/ (1) INTRODUCTION/602. Meanings of 'accident' and 'incident'.

602. Meanings of 'accident' and 'incident'.

'Accident' means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight¹ until such time as all such persons have disembarked, in which:

- 493 (1) a person suffers a fatal injury² or serious injury³ as a result of:
 - 9 11. (a) being in or upon the aircraft;
 12. (b) direct contact with any part of the aircraft, including parts which have become detached from the aircraft; or
 13. (c) direct exposure to jet blast,
- 10 494 except when the injuries are from natural causes, self-inflicted or inflicted by other persons⁴, or when the injuries are to stowaways⁵ hiding outside the areas normally available to the passengers and crew⁶; or
- 495 (2) the aircraft sustains damage or structural failure which:
 - 11 14. (a) adversely affects the structural strength, performance⁷ or flight characteristics of the aircraft; and
 15. (b) would normally require major repair or replacement of the affected component,
- 12 496 except for (i) engine failure or damage, when the damage is limited to the engine, its cowling or accessories; or (ii) damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents or puncture holes in the aircraft skin; or
- 497 (3) the aircraft is missing or is completely inaccessible⁸.

'Incident' means an occurrence, other than an accident, associated with the operation of an aircraft which affects or would affect the safety of operation⁹. 'Serious incident' means an incident involving circumstances indicating that an accident nearly occurred¹⁰.

1 As to the meaning of 'flight' for the purposes of accident investigation see PARA 601 note 2.

2 'Fatal injury' means an injury which is sustained by a person in an accident and which results in his death within 30 days of the date of the accident: Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 2(1).

3 'Serious injury' means an injury which is sustained by a person in an accident and which (1) requires hospitalisation for more than 48 hours, commencing within seven days from the date the injury was received; (2) results in a fracture of any bone (except simple fractures of fingers, toes or nose); (3) involves lacerations which cause severe haemorrhage, or nerve, muscle or tendon damage; (4) involves injury to any internal organ; (5) involves second or third degree burns, or any burns affecting more than 5% of the body surface; or (6) involves verified exposure to infectious substances or harmful radiation: Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 2(1).

4 As to crimes committed on board aircraft see PARA 620 et seq.

5 As to stowaways see PARAS 527, 627.

- 6 For these purposes, 'crew' includes every person employed or engaged in an aircraft in flight on the business of the aircraft: Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 2(1).
- 7 As to aircraft performance requirements see PARA 500 et seq.
- 8 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 2(1).
- 9 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 2(1). As to incidents which are reportable occurrences and which must be reported to the Civil Aviation Authority ('CAA') see PARA 583 et seq. As to the CAA see PARA 50.
- 10 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 2(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/ (1) INTRODUCTION/603. Purpose of investigation.

603. Purpose of investigation.

The sole objective of the investigation of a civil aviation accident¹ or incident² under the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996³ is the prevention of accidents and incidents⁴. It is not the purpose of such an investigation to apportion blame or liability⁵.

1 As to the meaning of 'accident' see PARA 602.

2 As to the meaning of 'incident' see PARA 602.

3 Ie the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798: see PARA 604 et seq.

4 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, regs 3, 4.

5 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 4.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/(2) ACCIDENT AND INCIDENT INVESTIGATION/604. Scope of regulations relating to the investigation of aviation accidents and incidents.

(2) ACCIDENT AND INCIDENT INVESTIGATION

604. Scope of regulations relating to the investigation of aviation accidents and incidents.

The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996¹ apply only to civil aviation accidents² and incidents³, and apply throughout the United Kingdom⁴. Separate provision is made in respect of the Isle of Man⁵ and the Channel Islands⁶.

The Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005⁷ relate to accidents involving military aircraft in circumstances in which there is a civil element, and provide that where a military aircraft⁸ is involved in an accident⁹ arising out of or in the course of air navigation occurring in or over the United Kingdom and the Secretaries of State¹⁰ are of the opinion that the accident occurred or may have occurred:

- 498 (1) while the aircraft was on, or in the course of taking off from or landing on, a civil aerodrome¹¹; or
- 499 (2) in such circumstances that the Secretaries of State are or may be concerned or interested in its circumstances or causes,

they may, save where the accident is one to which the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996¹² apply, direct that the accident is to be treated as an accident to which the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005 apply¹³.

1 Ie the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798. These regulations were made under the Civil Aviation Act 1982 s 75, and implement EC Council Directive 94/56 (OJ L319, 12.2.94, p 1) (corrected by OJ L191, 12.8.95, p 39) establishing the fundamental principles governing the investigation of civil aviation accidents and incidents: see PARA 600.

2 As to the meaning of 'accident' see PARA 602.

3 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 3. As to the meaning of 'incident' see PARA 602.

4 As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 See the Civil Aviation (Investigation of Accidents) (Isle of Man) Regulations 1974, SI 1974/1519.

6 See the Civil Aviation (Investigation of Air Accidents and Incidents) (Guernsey) Order 1998, SI 1998/1503; and the Civil Aviation (Investigation of Air Accidents and Incidents) (Jersey) Order 2000, SI 2000/1345.

7 Ie the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005, SI 2005/2693.

8 An aircraft is to be treated for the purpose of the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005, SI 2005/2693, as being a military aircraft if (1) it is an aircraft in the ownership of any of Her Majesty's naval, military or air forces; or (2) not being such an aircraft, it is an aircraft in the ownership of any of the naval, military or air forces of any other state; or (3) the Secretary of State for Defence certifies that by reason of the circumstances affecting the aircraft, it is to be treated for the purposes of the Regulations as being a military aircraft: reg 2(3).

9 For these purposes, 'accident' is defined by the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005, SI 2005/2693, reg 2(1), as an occurrence associated with the operation of a military aircraft which takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, in which:

- 52 (1) a person suffers a fatal or serious injury as a result of (a) being in or upon the aircraft; (b) direct contact with any part of the aircraft, including parts which have become detached from the aircraft; or (c) direct exposure to jet blast, except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or
- 53 (2) the aircraft sustains damage or structural failure which (a) adversely affects the structural strength, performance or flight characteristics of the aircraft; and (b) would normally require major repair or replacement of the affected component, except for engine failure or damage when the damage is limited to the engine, its cowlings or accessories, or for damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents or puncture holes in the aircraft skin.

10 References in the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005, SI 2005/2693, to the Secretaries of State are to the Secretary of State (ie the Secretary of State for Transport: see PARA 33) and the Secretary of State for Defence acting jointly: reg 2(4). As to the Secretary of State and the Secretary of State for Defence see PARA 33.

11 'Civil aerodrome' means an aerodrome used wholly or mainly for the purposes of civil aviation: Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005, SI 2005/2693, reg 2(1).

12 Ie the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798.

13 Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005, SI 2005/2693, reg 3(1). The procedure under the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005, SI 2005/2693, is similar to the procedure under the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, which apply to all civil aviation accidents and incidents (see the text and notes 1-4). However, the Civil Aviation (Investigation of Military Air Accidents at Civil Aerodromes) Regulations 2005, SI 2005/2693, do not meet the requirements of EC Council Directive 94/56 (OJ L319, 12.2.94, p 1) (corrected by OJ L191, 12.8.95, p 39).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/(2) ACCIDENT AND INCIDENT INVESTIGATION/605. Persons taking part in an investigation.

605. Persons taking part in an investigation.

For the purposes of the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996¹, the Chief Inspector of Air Accidents² must carry out, or cause an inspector to carry out, an investigation³ into:

- 500 (1) accidents⁴ and serious incidents⁵ which occur in or over the United Kingdom⁶;
- 501 (2) accidents and serious incidents which occur in or over any country or territory which is neither a member state nor a contracting state⁷ to aircraft registered in the United Kingdom when such an investigation is not carried out by another state⁸;
- 502 (3) serious incidents which occur in or over any country or territory which is neither a member state nor a contracting state to aircraft which are registered elsewhere than in the United Kingdom but which are operated by an undertaking established in the United Kingdom, when such an investigation is not carried out by another state⁹; and
- 503 (4) accidents and serious incidents to aircraft registered in the United Kingdom in certain circumstances described in Annex 13 to the Chicago Convention¹⁰.

The Chief Inspector may delegate the task of carrying out an investigation into an accident or incident to another member state or Switzerland or to another contracting state¹¹. Where the task is delegated he must, so far as he is able, facilitate inquiries by the investigator appointed by the relevant state¹².

Where an investigation of an accident or serious incident is being carried out by an investigating inspector¹³, an accredited representative¹⁴ appointed by the state of registry, the state of design, the state of manufacture, the state of the operator¹⁵, or a contracting state which has, on request, furnished information, facilities or experts to the investigating inspector in connection with the accident or serious incident, may take part in the investigation¹⁶. Any such representative is permitted to visit the scene of the accident, examine the wreckage, question witnesses, receive copies of all pertinent documents (saving all just exceptions as may be determined by the investigating inspector), have access to all relevant evidence and make submissions¹⁷. He may be accompanied by such technical and other advisers as may be considered necessary by the authorities of the country or territory by which he is appointed¹⁸.

1 le the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798.

2 The Chief Inspector of Air Accidents is appointed under the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8 by the Secretary of State: see regs 2(1), 8(1); and the text and notes 3-12. As to the Secretary of State see PARA 33.

The Chief Inspector may arrange for any of his powers and obligations to be performed on his behalf by an inspector designated by him to be his deputy: reg 8(9). 'Inspector' means a person appointed as an inspector of air accidents under reg 8: reg 2(1). The body of inspectors of air accidents form the Air Accidents Investigation Branch: see reg 8(2) (amended by virtue of SI 1997/2971).

3 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8(3). This is expressed to be subject to reg 8(5), (6): see the text and notes 11-12. As to investigations see further PARA 608 et seq.

4 As to the meaning of 'accident' see PARA 602.

5 As to the meaning of 'serious incident' see PARA 602.

6 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8(3)(a). As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 'Contracting state' means any state, including the United Kingdom, which is party to the Convention on International Civil Aviation (Chicago, 7 December 1944; TS 8 (1953); Cmd 8742): Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 2(1). As to the Chicago Convention see PARA 2 et seq.

8 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8(3)(b).

9 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8(3)(c).

10 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8(3)(d). The circumstances referred to in the text are those described in the Chicago Convention Annex 13 para 5.3 (accidents or serious incidents which occur outside the territory of any state). As to Annex 13 see PARA 598.

11 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8(5) (amended by SI 2004/1256).

12 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8(6).

13 In pursuant to the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8: see the text and notes 1-12. 'Investigating inspector' means an inspector carrying out an investigation pursuant to the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798: reg 2(1). For the purposes of reg 16, 'investigating inspector' in a case where more than one inspector is carrying out the task of investigation means the inspector nominated under reg 8(10) (see PARA 608 note 2): reg 16(2).

14 As to the meaning of 'accredited representative' see the Chicago Convention Annex 13 Ch 1; definition applied by the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 16(2).

15 As to the meanings of 'state of registry', 'state of design', 'state of manufacture', and 'state of the operator' see the Chicago Convention Annex 13 Ch 1; definitions applied by the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 16(2).

16 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 16(1).

17 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 16(1).

18 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 16(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/(2) ACCIDENT AND INCIDENT INVESTIGATION/606. Notification and furnishing of information.

606. Notification and furnishing of information.

Where an accident¹ or serious incident² occurs in respect of which³ the Chief Inspector of Air Accidents⁴ is required to carry out, or to cause an inspector⁵ to carry out, an investigation, the relevant person⁶ and, in the case of an accident or serious incident occurring on or adjacent to an aerodrome, the aerodrome authority⁷ must give notice of it to the Chief Inspector by the quickest means of communication available and, in the case of an accident occurring in or over the United Kingdom, must also notify a police officer⁸ for the area where the accident occurred of the accident and of the place where it occurred⁹.

Where an incident¹⁰, other than a serious incident, takes place in or over the United Kingdom, or otherwise than in or over the United Kingdom to an aircraft registered in the United Kingdom, the owner¹¹, operator, commander or hirer of the aircraft must, if so required by notice given to him by the Chief Inspector, send to the Chief Inspector such information as is in his possession or control with respect to the incident in such form and at such times as may be specified in the notice¹².

As a general rule the Chief Inspector may at any time publish, or cause to be published, information relating to an accident or incident whether or not it is the subject of an investigation by an inspector¹³.

1 As to the meaning of 'accident' see PARA 602.

2 As to the meaning of 'serious incident' see PARA 602.

3 Ie by virtue of the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8(3): see PARA 605.

4 As to the appointment of the Chief Inspector of Air Accidents see PARA 605 note 2.

5 As to the meaning of 'inspector' see PARA 605 note 2.

6 'Relevant person' means (1) in the case of an accident or serious incident occurring in or over the United Kingdom or occurring elsewhere to an aircraft registered in the United Kingdom, the commander of the aircraft involved at the time of the accident or serious incident or, if he is killed or incapacitated, the operator of the aircraft; and (2) in the case of a serious incident occurring in or over any country or territory other than a member state or a contracting state to an aircraft registered elsewhere than in the United Kingdom but operated by an undertaking established in the United Kingdom, that undertaking: Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 5(2). As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the meaning of 'contracting state' see PARA 605 note 7. 'Commander' in relation to an aircraft means a member of the flight crew designated as commander of that aircraft by the operator of it, or failing such a person, the person who is for the time being the pilot in command of the aircraft: reg 2(1). As to the meaning of 'crew' see PARA 602 note 6. 'Pilot in command', in relation to an aircraft, means a person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft: reg 2(1).

7 'Aerodrome authority' means, in relation to any aerodrome, the person by whom the aerodrome is managed: Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 2(1).

8 'Police officer' means any person who is a member of a police force or of the Police Service of Northern Ireland (including, for the avoidance of doubt, the Police Service of Northern Ireland Reserve), and any special constable: Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 2(1) (amended by the Police (Northern Ireland) Act 2000 s 78(2)(c), (d)).

9 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 5(1). For the information which the notice must contain see reg 5(3). As to the service of notices see reg 2(2).

10 As to the meaning of 'incident' see PARA 602.

11 'Owner' means, where an aircraft is registered, the registered owner: Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 2(1).

12 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 5(4).

13 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 6. This is expressed to be subject to regs 11(4)(b), 18: see PARAS 609, 612.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/(2) ACCIDENT AND INCIDENT INVESTIGATION/607. Removal of damaged aircraft.

607. Removal of damaged aircraft.

Where an accident¹ or serious incident² which results in the withdrawal from service of an aircraft occurs in or over the United Kingdom³, no person other than an authorised person⁴ may have access to the aircraft involved and neither the aircraft nor its contents may be removed or otherwise interfered with except under the authority of the Secretary of State⁵, save that⁶:

- 504 (1) the aircraft may be removed or interfered with so far as may be necessary⁷ for the purpose of (a) extricating persons or animals⁸; (b) removing any mail, valuables or dangerous goods carried by the aircraft⁹; (c) preventing destruction by fire or other cause¹⁰; (d) preventing any danger or obstruction to the public, air navigation or other transport¹¹; or (e) removing other property from the aircraft under the supervision of an inspector¹² or with the agreement of an inspector or of a constable¹³; and
- 505 (2) if the aircraft is wrecked on water, the aircraft or any of its contents may be removed to such extent as may be necessary for bringing it or them to a place of safety¹⁴.

1 As to the meaning of 'accident' see PARA 602.

2 As to the meaning of 'serious incident' see PARA 602.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 'Authorised person' means (1) any person authorised by the Secretary of State either generally or specially to have access to any aircraft involved in an accident or serious incident; (2) any constable; and (3) any officer of revenue and customs: Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 7(3); Commissioners for Revenue and Customs Act 2005 s 50(2). As to the Secretary of State see PARA 33.

5 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 7(1). This is expressed to be subject to reg 7(2) (see the text and notes 6-14) and reg 9 (see PARAS 608-609). For the penalty for contravention see PARA 600.

6 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 7(2). This is expressed to be subject to the provisions of the Customs and Excise Management Act 1979 s 21(4), (4A), (5): see PARA 311; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 942.

7 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 7(2)(a).

8 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 7(2)(a)(i).

9 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 7(2)(a)(ii).

10 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 7(2)(a)(iii).

11 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 7(2)(a)(iv).

12 As to the meaning of 'inspector' see PARA 605 note 2.

13 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 7(2)(a)(v).

14 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 7(2)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/(3) INSPECTORS' INVESTIGATIONS/608. Duties of inspectors of air accidents and incidents.

(3) INSPECTORS' INVESTIGATIONS

608. Duties of inspectors of air accidents and incidents.

The Chief Inspector of Air Accidents¹ must carry out, or cause an inspector² to carry out, an investigation into any accident³ or serious incident⁴ falling within the scope of the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996⁵. The Chief Inspector may, when he expects to draw air safety lessons from it, carry out, or cause an inspector to carry out, an investigation into an incident, other than a serious incident, which occurs in or over the United Kingdom⁶, or otherwise than in or over the United Kingdom to an aircraft registered in the United Kingdom⁷. He may also carry out, or cause an inspector to carry out, an investigation into an accident or incident where the task of carrying out the investigation has been delegated to the United Kingdom by another member state or Switzerland or by another contracting state⁸.

When requested to do so by the investigating body or entity of another member state or Switzerland, the Chief Inspector may provide assistance to that body or entity by supplying⁹:

- 506 (1) installations, facilities and equipment for (a) the technical investigation of wreckage and aircraft equipment and other objects relevant to the investigation; (b) the evaluation of information from flight recorders; (c) the computer storage and evaluation of air accident data¹⁰; and
- 507 (2) accident investigation experts to undertake specific tasks but only when an investigation is opened following a major accident¹¹.

1 As to the appointment of the Chief Inspector of Air Accidents see PARA 605 note 2.

2 As to the meaning of 'inspector' see PARA 605 note 2. In any case where the Chief Inspector causes more than one inspector to carry out an investigation he must nominate one of them to be in overall charge of the investigation: Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8(10).

3 As to the meaning of 'accident' see PARA 602.

4 As to the meaning of 'serious incident' see PARA 602.

5 ie falling within the scope of the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798: see PARAS 604-605.

6 As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8(4). This is expressed to be subject to reg 8(5), (6): see PARA 605.

8 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8(7) (amended by SI 2004/1256). As to the meaning of 'contracting state' see PARA 605 note 7.

9 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(4) (amended by SI 2004/1256).

10 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(4)(a).

11 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(4)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/(3) INSPECTORS' INVESTIGATIONS/609. Powers of inspectors.

609. Powers of inspectors.

An inspector¹ has power to seek such advice or assistance as he deems necessary in making an investigation and further assistance may be given by persons appointed for that purpose by the Secretary of State² at the request of the Chief Inspector of Air Accidents³.

For the purpose of enabling him to carry out an investigation into an accident⁴ or incident⁵ in the most efficient way and within the shortest time, an investigating inspector is authorised, where appropriate in co-operation with the authorities responsible for the judicial inquiry, to⁶:

- 508 (1) have free access to the site of the accident or incident as well as to the aircraft, its contents or its wreckage⁷;
- 509 (2) ensure an immediate listing of evidence and controlled removal of debris, or components for the purposes of examination or analysis⁸;
- 510 (3) have immediate access to and use of the contents of the flight recorders and any other recordings⁹;
- 511 (4) have access to the results of examination of the bodies of victims or of tests made on samples taken from the bodies of victims¹⁰;
- 512 (5) have immediate access to the results of examinations of the people involved in the operation of the aircraft or of tests made on samples taken from such people¹¹;
- 513 (6) examine witnesses¹²; and
- 514 (7) have free access to any relevant information or records held by the owner¹³, the operator or the manufacturer of the aircraft and by the authorities responsible for civil aviation or airport operation¹⁴.

For the purposes of heads (1) to (7) above, an investigating inspector has power¹⁵:

- 515 (a) by summons under his hand to call before him and examine all such persons as he thinks fit, to require such persons to answer any question or furnish any information or produce any books, papers, documents and articles which the investigating inspector may consider relevant and to retain any such books, papers, documents and articles until the completion of the investigation¹⁶;
- 516 (b) to take statements from all such persons as he thinks fit and to require any such person to make and sign a declaration of the truth of the statement made by him¹⁷;
- 517 (c) on production if required of his credentials, to enter and inspect any place, building or aircraft the entry or inspection of which appears to the investigating inspector to be requisite for the purposes of the investigation¹⁸;
- 518 (d) on production if required of his credentials, to remove, test, take measures for the preservation of or otherwise deal with any aircraft other than an aircraft involved in the accident or incident where it appears to the investigating inspector requisite for the purposes of the investigation¹⁹; and
- 519 (e) to take such measures for the preservation of evidence as he considers appropriate²⁰.

Every person summoned by an investigating inspector under head (a) above must be allowed such expenses as the Secretary of State may determine²¹.

- 1 As to the meaning of 'inspector' see PARA 605 note 2.
- 2 As to the Secretary of State see PARA 33.
- 3 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 8(8). As to the appointment of the Chief Inspector of Air Accidents see PARA 605 note 2.
- 4 As to the meaning of 'accident' see PARA 602.
- 5 As to the meaning of 'incident' see PARA 602.
- 6 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(1).
- 7 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(1)(a).
- 8 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(1)(b).
- 9 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(1)(c).
- 10 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(1)(d).
- 11 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(1)(e).
- 12 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(1)(f).
- 13 As to the meaning of 'owner' see PARA 606 note 11.
- 14 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(1)(g). As to the disclosure of relevant records see reg 18.
- 15 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(2).
- 16 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(2)(a).
- 17 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(2)(b).
- 18 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(2)(c).
- 19 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(2)(d).
- 20 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(2)(e).
- 21 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 9(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/(3) INSPECTORS' INVESTIGATIONS/610. Form and conduct of investigation.

610. Form and conduct of investigation.

The extent of investigations and the procedure to be followed in carrying out investigations required or authorised under the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996¹ must be determined by the Chief Inspector of Air Accidents² taking account of the purpose of the investigation of accidents³ and incidents⁴, the principles and objectives governing the investigation of civil aviation accidents and incidents⁵, and the lessons he expects to draw from the accident or incident for the improvement of safety⁶.

1 Ie the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798.

2 As to the appointment of the Chief Inspector of Air Accidents see PARA 605 note 2.

3 As to the meaning of 'accident' see PARA 602.

4 As to the purpose of such investigations see the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 4; and PARA 603. As to the meaning of 'incident' see PARA 602.

5 Ie the principles and objectives of EC Council Directive 94/56 (OJ L319, 12.2.94, p 1) (corrected by OJ L191, 12.8.95, p 39) establishing the fundamental principles governing the investigation of civil aviation accidents and incidents.

6 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 10.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/(3) INSPECTORS' INVESTIGATIONS/611. Obstruction of investigation.

611. Obstruction of investigation.

A person must not obstruct or impede an inspector¹ or any person acting under the authority of the Secretary of State² in the exercise of any powers or duties under the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996³. After having had tendered to him any expenses to which he is entitled⁴, a person may not without reasonable excuse fail to comply with any summons of an inspector holding an investigation⁵.

1 As to the meaning of 'inspector' see PARA 605 note 2.

2 As to the Secretary of State see PARA 33.

3 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 17(1).

4 See PARA 609 text and note 21.

5 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 17(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/(3) INSPECTORS' INVESTIGATIONS/612. Inspectors' reports.

612. Inspectors' reports.

When an inspector¹ has completed an investigation into an accident² or incident³, he must prepare a report of the investigation in a form appropriate to the type and seriousness of the accident or incident⁴.

The report of an investigation into an accident must state that the sole objective of the investigation is the prevention of accidents and incidents⁵; and, where appropriate, the report must contain safety recommendations⁶. The report of an investigation into an incident must, where appropriate, contain relevant safety recommendations, protect the anonymity of the persons involved in the incident, and be circulated by the investigating inspector⁷ to the parties likely to benefit from its findings with regard to safety⁸.

The Chief Inspector of Air Accidents⁹ must submit a copy of every report to the Secretary of State¹⁰ without delay¹¹ and (save in respect of an incident the investigation of which has been delegated to the United Kingdom¹² by another member state or Switzerland) must cause the report to be made public in the shortest time possible¹³ and in such manner as he thinks fit¹⁴.

If it appears to the investigating inspector that the investigation of any accident or incident:

- 520 (1) involving a collision between a civil aircraft and a military aircraft¹⁵; or
- 521 (2) occurring while a civil aircraft was on, or in the course of taking off from or landing on, an aerodrome controlled by any of Her Majesty's or any other country's naval, military or air forces¹⁶,

has been completed but for the investigation of matters affecting the discipline or internal administration of any of those forces which are more appropriate for the investigation by some other person or body, the investigation may be treated as if it had been completed without such matters being investigated under the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996¹⁷. In such a case the report must state those matters to which the investigation has not been extended¹⁸.

If in the investigating inspector's opinion a report is likely to affect adversely the reputation of any person, it must not be published until the investigating inspector has¹⁹ (a) where it appears to him to be practicable to do so, served a notice²⁰ upon that person, or if that person is a deceased individual, upon the person who appears to him, at the time he proposes to serve notice, to represent best the interest of the deceased in the matter²¹; and (b) made such changes to the report as he thinks fit following his consideration of any representations which may be made to him²² by or on behalf of the person served with such notice²³.

A copy of the report submitted to the Secretary of State²⁴ must be served by the investigating inspector on any person who has been served with a notice of the inspector's report²⁵.

No person may, without the prior consent in writing of the Chief Inspector, disclose or permit to be disclosed to any other person any information contained in a notice or report served on him²⁶.

1 As to the meaning of 'inspector' see PARA 605 note 2.

2 As to the meaning of 'accident' see PARA 602.

3 As to the meaning of 'incident' see PARA 602.

4 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 11(1).

5 As to the sole objective of the investigation see PARA 603.

6 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 11(3). A safety recommendation does not create a presumption of blame or liability for an accident or incident: reg 11(5).

7 For the purposes of the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, regs 11, 12, 'investigating inspector' in a case where more than one inspector is carrying out the task of investigation means the inspector nominated under reg 8(10) (see PARA 608 note 2): regs 11(7), 12(7).

8 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 11(4).

9 As to the appointment of the Chief Inspector of Air Accidents see PARA 605 note 2.

10 As to the Secretary of State see PARA 33.

11 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 11(6).

12 As to the meaning of 'United Kingdom' see PARA 30 note 1.

13 If possible, the report must be made public within 12 months of the date of the accident or serious incident: see the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 13. As to the meaning of 'serious incident' see PARA 602.

14 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 13 (amended by SI 2004/1256). This is expressed to be subject to the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 12(1): see the text and note 19.

15 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 11(2)(a).

16 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 11(2)(b).

17 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 11(2).

18 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 11(2).

19 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 12(1).

20 This notice must include particulars of any proposed analysis of facts and conclusions as to the cause or causes of the accident or incident which may affect the person on whom or in respect of whom the notice is served: Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 12(2). As to the service of notices see reg 2(2).

21 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 12(1)(a).

22 Any such representations must be in writing and must be served on the investigating inspector within 28 days of service of the notice referred to in head (a) in the text: Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 12(3). The Chief Inspector has power to extend the period of 28 days and this power is exercisable notwithstanding that that period has expired: reg 12(6).

23 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 12(1)(b).

24 Ie under the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 11(6): see the text to notes 9-11.

25 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 12(4).

26 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 12(5). The notice or report referred to in the text is a notice or report served pursuant to reg 12(1) (see the text to notes 19-23) or reg 12(4) (see the text and notes 24-25).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/(3) INSPECTORS' INVESTIGATIONS/613. Recommendations.

613. Recommendations.

The Chief Inspector of Air Accidents¹ must cause reports of an investigation into an accident² or incident³, including those not required to be published and including the safety recommendations contained in them, to be communicated to the undertakings or national aviation authorities concerned and copies of them to be forwarded to the European Commission⁴.

Any undertaking or authority to which a safety recommendation is communicated must without delay⁵:

- 522 (1) take that recommendation into consideration and, where appropriate, act upon it⁶;
- 523 (2) send to the Secretary of State⁷ (a) full details of the measures, if any, it has taken or proposes to take to implement the recommendation and, in a case where it proposes to implement measures, the timetable for securing that implementation⁸; or (b) a full explanation as to why the recommendation is not to be the subject of measures to be taken to implement it⁹; and
- 524 (3) give notice to the Secretary of State if at any time any information provided to the Secretary of State in pursuance of head (2) above concerning the measures it proposes to take or the timetable for securing their implementation is rendered inaccurate by any change of circumstances¹⁰.

1 As to the appointment of the Chief Inspector of Air Accidents see PARA 605 note 2.

2 As to the meaning of 'accident' see PARA 602.

3 See the reports referred to in the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 13: see PARA 612. As to the meaning of 'incident' see PARA 602.

4 See the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 14(1).

5 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 14(2).

6 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 14(2)(a).

7 As to the Secretary of State see PARA 33.

8 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 14(2)(b)(i).

9 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 14(2)(b)(ii).

10 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, 14(2)(c).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/8. ACCIDENTS AND INCIDENTS/(3) INSPECTORS' INVESTIGATIONS/614. Re-opening of investigation.

614. Re-opening of investigation.

The Chief Inspector of Air Accidents¹ may cause the investigation of any accident² or incident³ to be re-opened and must do so⁴ (1) if, after the completion of the investigation, evidence has been disclosed which is in his opinion both new and important⁵; or (2) if, for any other reason, there is in his opinion ground for suspecting that the reputation of any person has been unfairly and adversely affected⁶. Any investigation re-opened is subject to and conducted in accordance with the provisions of the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996⁷.

1 As to the appointment of the Chief Inspector of Air Accidents see PARA 605 note 2.

2 As to the meaning of 'accident' see PARA 602.

3 As to the meaning of 'incident' see PARA 602.

4 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 15(1).

5 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 15(1)(a).

6 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 15(1)(b).

7 Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798, reg 15(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/ (1) JURISDICTION AND EVIDENCE/615. Jurisdiction in civil matters.

9. LIABILITIES

(1) JURISDICTION AND EVIDENCE

615. Jurisdiction in civil matters.

The question whether the United Kingdom courts have jurisdiction over a particular matter arising in relation to aircraft or air navigation will ordinarily¹ fall to be decided in accordance with the general law of the United Kingdom².

A court in any part of the United Kingdom³ has jurisdiction to hear and determine a claim for charges or interest payable in respect of chargeable air services⁴ notwithstanding that the person against whom the claim is made is not resident within the jurisdiction of the court⁵.

Her Majesty may make provision by Order in Council as to the courts in which proceedings may be taken for enforcing any claim in respect of aircraft, and in particular may provide for conferring jurisdiction in any such proceedings on any court exercising Admiralty jurisdiction and for applying to such proceedings any rules of practice or procedure applicable to proceedings in Admiralty⁶. This power has only been exercised so as to confer jurisdiction upon Admiralty courts in cases relating to wreck and salvage of aircraft⁷.

1 There are specific provisions as to jurisdiction over claims brought under the terms of the Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw, 12 October 1929; TS 11 (1933); Cmd 4284), and the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, 28 May 1999; TS 44 (2004); Cm 6369): see the Carriage by Air Act 1961 s 1(1), Sch 1 art 28, and Sch 1A art 28 (see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq); and the Carriage by Air Acts (Application of Provisions) Order 2004, SI 2004/1899, art 5, Sch 2 Pt II art 28, and art 6, Sch 3 Pt II art 28 (see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq). As to the Warsaw Convention and the Montreal Convention see PARA 8; and **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq.

2 See generally **CONFLICT OF LAWS**.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 Transport Act 2000 s 76(2), (3)(a). The reference in the text to charges or interest payable in respect of chargeable air services is a reference to charges or interest payable by virtue of s 73: see PARA 589. As to the meaning of 'chargeable air services' see PARA 588.

5 See the Transport Act 2000 s 76(4); and PARA 592.

6 Civil Aviation Act 1982 s 91.

7 See the Civil Aviation Act 1982 s 87; and PARA 599. See also **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 114.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/ (1) JURISDICTION AND EVIDENCE/616. Jurisdiction in criminal matters.

616. Jurisdiction in criminal matters.

A number of special provisions modify the limits which the general law imposes on the criminal jurisdiction of the courts of the United Kingdom¹.

For the purpose of conferring jurisdiction on the courts of the United Kingdom, any offence under the law in force in, or in a part of, the United Kingdom on board an aircraft in flight is deemed to have been committed in any place in the United Kingdom (or any part of it) where the offender may for the time being be².

Any court in the United Kingdom having jurisdiction in respect of piracy³ committed on the high seas has jurisdiction in respect of piracy committed by or against an aircraft⁴, wherever that piracy is committed⁵.

1 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

2 Civil Aviation Act 1982 s 92(3). As to offences committed by bodies corporate see s 99(2), (5) (s 99(5) amended by the Airports Act 1986 s 83(5), Sch 6 Pt II).

3 See PARA 623.

4 As to the meaning of 'aircraft' for these purposes see PARA 619 note 2; definition applied by the Aviation Security Act 1982 s 5(2).

5 Aviation Security Act 1982 s 5(1).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/ (1) JURISDICTION AND EVIDENCE/617. Documentary evidence.

617. Documentary evidence.

In any legal proceedings, a document purporting to be certified by a designated authority or person¹ as being, or being a true copy of, or of part of, a document issued or record kept, in pursuance of an air navigation order², by a government department, by the minister in charge of such a department, by an official specified in such an order, or by the Civil Aviation Authority ('CAA'), is evidence of the matters appearing from that document³. The same applies to any document printed by either Her Majesty's Stationery Office or the CAA and purporting to be the publication known as 'United Kingdom Air Pilot' or a publication of the series known as 'NOTAM-United Kingdom'⁴.

Any record made by, or by a person acting under the control of, a designated person or authority and purporting to show the position of an aircraft at any material time or the terms or contents of any message or signal transmitted to or received from any aircraft is, if produced from the custody of the designated person or authority, evidence in any legal proceedings of the matters appearing from the record⁵.

1 See the Civil Aviation (Documentary Evidence) Regulations 1972, SI 1972/187. Under these regulations, any document certified by the Civil Aviation Authority ('CAA') as being, or as being a true copy of, an instrument made by the CAA is evidence of that instrument; and a copy, certified by the CAA, of the relevant issue of the CAA's Official Record is evidence of the publication of any notice or other matter by the CAA: see reg 4. As to the CAA see PARA 50 et seq.

2 As to air navigation orders see PARA 353 et seq.

3 Civil Aviation Act 1982 s 96(1)(a).

4 Civil Aviation Act 1982 s 96(1)(b). As from a day to be appointed, in place of the documents referred to in the text, any document printed by or on behalf of the CAA and purporting to be one of the elements of the United Kingdom's Integrated Aeronautical Information Package is evidence of the matters appearing from the document: s 96(1)(b) (prospectively substituted by the Civil Aviation Act 2006 s 9). At the date at which this volume states the law, no such day had been appointed.

5 Civil Aviation Act 1982 s 96(2).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/ (1) JURISDICTION AND EVIDENCE/618. Evidence by deposition in criminal cases.

618. Evidence by deposition in criminal cases.

Where in any proceedings before a court in the United Kingdom¹ for an offence committed on board an aircraft² the testimony of any person is required and the court is satisfied that such person cannot be found in the United Kingdom, any deposition³ previously made on oath⁴ by that person outside the United Kingdom is admissible provided that it was made in the presence of the person charged with the offence⁵ before a judge or magistrate of a Commonwealth country or one which at the time was part of Her Majesty's dominions or in which Her Majesty had jurisdiction or before a consular officer of Her Majesty's government in the United Kingdom⁶. The judge, magistrate or officer must sign, and thus authenticate, the deposition and certify that the person charged with the offence was present at the taking of the deposition⁷.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 As to the meaning of 'aircraft' for these purposes see PARA 619 note 2; definition applied by the Civil Aviation Act 1982 s 95(5).

3 'Deposition' includes any affidavit, affirmation or statement made upon oath: Civil Aviation Act 1982 s 95(5).

4 'Oath' includes an affirmation or declaration in the case of persons allowed by law to affirm or declare instead of swearing: Civil Aviation Act 1982 s 95(5).

5 Civil Aviation Act 1982 s 95(1)(a).

6 Civil Aviation Act 1982 s 95(1)(b). As to Commonwealth countries and Her Majesty's dominions see **COMMONWEALTH** vol 13 (2009) PARAS 701, 707. If a complaint is made to a consular officer that an offence has been committed on a British-controlled aircraft while in flight elsewhere than in or over the United Kingdom or there has taken place on board a foreign aircraft an act or omission which constitutes an offence by virtue of s 92(1) (see PARA 621), that officer may inquire into the case upon oath: s 95(4) (amended by the Civil Aviation (Amendment) Act 1996 s 2). As to the meanings of 'British-controlled aircraft' and 'foreign aircraft' see PARA 619 note 2; definitions applied by the Civil Aviation Act 1982 s 95(5). As to the meaning of 'flight' see PARA 619 note 3; definition applied by s 95(5). Nothing in s 95 prejudices the admission as evidence of any deposition which is admissible in evidence apart from s 95: s 95(6).

7 Civil Aviation Act 1982 s 95(2). The certificate is sufficient evidence of the presence of the person charged with the offence at the making of the deposition, unless the contrary is proved, and it is not necessary in the proceedings to prove the signature or official character of the person appearing to have authenticated the deposition or given the certificate: s 95(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/ (1) JURISDICTION AND EVIDENCE/619. Taking of criminal proceedings.

619. Taking of criminal proceedings.

No proceedings for any offence under the law in force in, or in part of, the United Kingdom¹ committed on board an aircraft² while in flight³ elsewhere than in or over the United Kingdom may be instituted in England and Wales except by or with the consent of the Director of Public Prosecutions⁴.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 'Aircraft' means any aircraft, whether or not a British-controlled aircraft, other than a military aircraft or an aircraft which, not being a military aircraft, belongs to or is exclusively employed in the service of Her Majesty in right of the United Kingdom: Civil Aviation Act 1982 s 92(5). A 'British-controlled aircraft' is an aircraft (1) which is for the time being registered in the United Kingdom; (2) which is not registered in any country but in the case of which either the operator of it, or each person entitled as owner to any legal or beneficial interest in it, is qualified to be the owner of a legal or beneficial interest in an aircraft registered in the United Kingdom and resides or has his principal place of business in the United Kingdom; or (3) which is registered in another country and is for the time being chartered by demise to a person who, or to persons each of whom, satisfy the requirements mentioned above: s 92(5). A 'foreign aircraft' is any aircraft other than a British-controlled aircraft: s 92(5) (added by the Civil Aviation (Amendment) Act 1996 s 1(5)). A 'military aircraft' is an aircraft of the naval, military or air forces of any country or any other aircraft in respect of which there is in force a certificate issued in accordance with any Order in Council in force under the Civil Aviation Act 1982 s 60, s 87, s 89, s 91, s 101(1) (a) or s 107(2) (see PARAS 31, 353, 436, 599, 615) that the aircraft is to be treated for the purposes of that Order in Council as a military aircraft: s 95(5). A certificate of the Secretary of State that any aircraft is or is not a military aircraft for these purposes is conclusive evidence of the fact certified: s 95(5). As to the Secretary of State see PARA 33. As to the chartering of aircraft see PARA 433 et seq.

Her Majesty may, by Order in Council, apply the provisions of the Civil Aviation Act 1982 ss 92-95, with or without modifications, to an aircraft which, not being a military aircraft, belongs to or is exclusively employed in the service of Her Majesty in right of the United Kingdom: s 101(1)(b).

3 The period during which an aircraft is in flight is deemed to include any period from the moment when power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run (if any) at the termination of that flight ends: Civil Aviation Act 1982 s 92(4). A reference to an aircraft in flight includes a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country: s 92(4).

4 Civil Aviation Act 1982 s 92(2)(a). This is subject to any provision to the contrary in any Act passed after 14 July 1967: s 92(2). That date was the day on which the Tokyo Convention Act 1967 was passed (ie received the Royal Assent). That Act is now largely repealed. It made provision, consequential upon the signing of the Convention on Offences and certain other Acts Committed on board Aircraft (Tokyo, 14 September 1963; TS 136 (1969); Cmnd 4230) (superseding Misc 3 (1964); Cmnd 2261), in connection with offences committed on board aircraft. As to the Tokyo Convention see PARA 13.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/620. General provisions.

(2) OFFENCES

(i) In general

620. General provisions.

A large part of air law is criminal law, as a large proportion of it consists of regulations governing the use of aircraft, the breach of which is an offence. These include many provisions of the Air Navigation Order 2005¹, which has a degree of extra-territorial application² and which contains a table of penalties applying in the case of contravention of particular provisions³.

If any provision of the Air Navigation Order 2005 or of any regulation made under it or of Part 21, 145 or M⁴ is contravened in relation to an aircraft, the operator⁵ and the commander⁶ of that aircraft (and, in some limited circumstances, its charterer⁷) are, without prejudice to the liability of any other person for that contravention, deemed to have contravened that provision, unless they prove that the contravention occurred without their consent or connivance and that they exercised all due diligence to prevent it⁸.

If it is proved that an act or omission⁹ of any person was due to any cause not avoidable by the exercise of reasonable care by that person, the act or omission is deemed not to be a contravention by that person¹⁰.

Where a person is charged with a contravention¹¹ by reason of his having been a member of the flight crew¹² of an aircraft on a flight for the purpose of public transport¹³ or aerial work¹⁴, the flight is to be treated (without prejudice to the liability of any other person) as not having been for that purpose if he proves that he neither knew nor suspected that the flight was for that purpose¹⁵.

1 Ie the Air Navigation Order 2005, SI 2005/1970: see PARA 353 et seq. For examples of such offences see PARA 524 et seq. For offences relating to alcohol and drugs see the Railways and Transport Safety Act 2003 Pt 5 (ss 92-102); and PARA 633 et seq.

2 See the Air Navigation Order 2005, SI 2005/1970, art 149.

3 See the Air Navigation Order 2005, SI 2005/1970, art 148(4)-(7), Sch 14.

4 As to the meaning of 'Part 21', 'Part 145' and 'Part M' see PARA 412 note 2.

5 As to the meaning of 'operator' see PARA 437.

6 As to the meaning of 'commander' see PARA 456.

7 Ie where the Air Navigation Order 2005, SI 2005/1970, art 138 (see PARA 363) is contravened. As to the chartering of aircraft see PARA 433 et seq.

8 Air Navigation Order 2005, SI 2005/1970, art 148(1).

9 Ie an act or omission which would otherwise have been a contravention of a provision of the Air Navigation Order 2005, SI 2005/1970, or of a regulation made under it or of Part 21, 66, 145, 147 or M: Air Navigation Order 2005, SI 2005/1970, art 148(2). As to the meaning of 'Part 66' see PARA 407 note 5; and as to the meaning of 'Part 147' see PARA 493 note 3.

10 Air Navigation Order 2005, SI 2005/1970, art 148(2).

- 11 le contravening a provision of the Air Navigation Order 2005, SI 2005/1970, or any regulations made under it.
- 12 As to the meaning of 'flight crew' see PARA 456.
- 13 As to public transport see PARA 363.
- 14 As to the meaning of 'aerial work' see PARA 364.
- 15 Air Navigation Order 2005, SI 2005/1970, art 148(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/621. Offences on board aircraft.

621. Offences on board aircraft.

Any act or omission taking place on a British-controlled aircraft¹ while in flight² elsewhere than in or over the United Kingdom³ which, if taking place in, or in a part of, the United Kingdom would constitute an offence under the law in force in, or in that part of, the United Kingdom is deemed to constitute that offence unless that act or omission is expressly or impliedly authorised by or under the law when taking place outside the United Kingdom⁴. This also applies to any act or omission taking place on board a foreign aircraft⁵ where the next landing of the aircraft is in the United Kingdom and the act or omission would, if taking place in the country where the aircraft is registered⁶, also constitute an offence under the law in force in that country⁷.

1 As to the meanings of 'aircraft' and 'British-controlled aircraft' see PARA 619 note 2.

2 As to the period during which an aircraft is in flight see PARA 619 note 3.

3 As to the meaning of 'United Kingdom' see PARA 30 note 1.

4 Civil Aviation Act 1982 s 92(1) (amended by the Civil Aviation (Amendment) Act 1996 s 1(2)).

5 As to the meaning of 'foreign aircraft' see PARA 619 note 2.

6 As to the registration of aircraft see PARA 367 et seq.

7 Civil Aviation Act 1982 s 92(1A) (s 92(1A), (1B), (2A)-(2C) added by the Civil Aviation (Amendment) Act 1996 s 1(3), (4)). Any act or omission punishable under the law in force in that country is an offence for this purpose, however it is described in that law (Civil Aviation Act 1982 s 92(1B) (as so added)); and the requirement that the act or omission would, if taking place in the country where the aircraft is registered, also constitute an offence under the law in force in that country is taken to be met unless, not later than the rules of court may provide, the defence serve on the prosecution a notice stating that, on the facts as alleged, the requirement is not in its opinion met, showing the grounds for its opinion, and requiring the prosecution to prove that it is met (s 92(2A) (as so added)). The court, if it thinks fit, may permit the defence to require the prosecution to prove that the requirement is met when such a notice has not been served: s 92(2B) (as so added). In the Crown Court the question whether the requirement is met is to be decided by the judge alone: s 92(2C) (as so added).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/622. International conventions dealing with crimes relating to aviation.

622. International conventions dealing with crimes relating to aviation.

The United Kingdom is a party to, and has given effect to, a number of international conventions dealing with crimes against the safety of aviation. These include the Convention on Offences and certain other Acts Committed on board Aircraft¹, the Convention for the Suppression of Unlawful Seizure of Aircraft², the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation³ and the Protocol for the suppression of unlawful acts of violence at airports serving international aviation⁴. The parties to the foregoing conventions are listed in the Extradition Act 2003 (Parties to International Conventions) Order 2005⁵.

¹ I.e. the Convention on Offences and certain other Acts Committed on board Aircraft (Tokyo, 14 September 1963; TS 136 (1969); Cmnd 4230) (superseding Misc 3 (1964); Cmnd 2261): see PARA 13. For a list of countries which have ratified the Convention see the Tokyo Convention (Certification of Countries) Order 1977, SI 1977/1258; and the Tokyo Convention (Certification of Countries) (Supplementary) Order 1978, SI 1978/1534.

² I.e. the Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 16 December 1970; Misc 5 (1971); Cmnd 4577): see PARA 14. The Convention was set out in the Extradition (Hijacking) Order 1997, SI 1997/1763, Sch 1. The states which are parties to the Convention were listed in the Extradition (Hijacking) Order 1997, SI 1997/1763, Schs 2, 3. The Extradition (Hijacking) Order 1997, SI 1997/1763, has lapsed and general provision for extradition is now made by the Extradition Act 2003 (see PARA 632).

³ I.e. the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 23 September 1971; Misc 26 (1971); Cmnd 4822): see PARA 15. The Convention was set out in the Extradition (Aviation Security) Order 1997, SI 1997/1760, Sch 1 Pt I. The countries which had ratified the Convention were listed in the Extradition (Aviation Security) Order 1997, SI 1997/1760, Sch 2 Pt I, Sch 3 Pt IA. The Extradition (Aviation Security) Order 1997, SI 1997/1760, has now lapsed. The Convention was given effect in United Kingdom law by the Protection of Aircraft Act 1973; although this has been repealed, the relevant provisions are re-enacted in the Aviation Security Act 1982 Pt I (ss 1-8) (see PARA 623 et seq). These provisions have been extended to specified overseas territories, Jersey and Guernsey: see the Aviation Security 1982 s 39 (amended by the Extradition Act 1989 s 37, Sch 2; the Aviation and Maritime Security Act 1990 s 53(2), Sch 4; and the Merchant Shipping and Maritime Security Act 1997 ss 26(5), 29(2), Sch 7 Pt I); the Aviation Security and Piracy (Overseas Territories) Order 2000, SI 2000/3059, arts 2, 3(1), Schs 1, 2, 3; the Aviation Security (Jersey) Order 1993, SI 1993/1251, art 2(1), Sch 1; and the Aviation Security (Guernsey) Order 1997, SI 1997/2989, art 2(1), Sch 1.

⁴ I.e. the Protocol for the suppression of unlawful acts of violence at airports serving international aviation (Montreal, 24 February 1988; TS 20 (1991); Cm 1470) (previously published Misc 6 (1988); Cm 378): see PARA 15. The Protocol was set out in the Extradition (Aviation Security) Order 1997, SI 1997/1760, Sch 1 Pt II, and the countries which had ratified the Protocol were listed in the Extradition (Aviation Security) Order 1997, SI 1997/1760, Sch 2 Pt II, Sch 3 Pt IB; but the order has now lapsed. The dispositions of the Protocol were enacted in United Kingdom law by means of amendments made to the Aviation Security Act 1982 by the Aviation and Maritime Security Act 1990.

⁵ See the Extradition Act 2003 (Parties to International Conventions) Order 2005, SI 2005/46.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/623. Piracy by or against aircraft.

623. Piracy by or against aircraft.

The offence of piracy, as provided for in the United Nations Convention on the Law of the Sea 1982¹, is treated for the purposes of any proceedings before a court in the United Kingdom² as constituting part of the law of nations³. Any court in the United Kingdom having jurisdiction in respect of piracy committed on the high seas⁴ has jurisdiction in respect of piracy committed by or against an aircraft⁵, wherever that piracy is committed⁶.

1 The United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982; Misc 11 (1983); Cmnd 8941). The Convention provides that piracy consists of any of the following acts: (1) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or aircraft directed: (a) on the high seas, against another ship or aircraft or against persons or property on board such ship or aircraft; or (b) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state; (2) any act of voluntary participation in the operation of a ship or aircraft with knowledge of facts making it a pirate ship or aircraft; or (3) any act of inciting or of intentionally facilitating any such act: art 101 (as set out in the Merchant Shipping and Maritime Security Act 1997 s 26(1), Sch 5). Provision is made for the application of the Merchant Shipping and Maritime Security Act 1997 s 26(4), Sch 5 to proceedings before a court exercising jurisdiction in respect of piracy in specified overseas territories, Jersey or Guernsey: see the Aviation Security Act 1982 s 39(2) (substituted by the Merchant Shipping and Maritime Security Act 1997 s 26(5)); the Aviation Security and Piracy (Overseas Territories) Order 2000, SI 2000/3059, arts 2, 4, Schs 1, 5; the Aviation Security (Jersey) Order 1993, SI 1993/1251, art 2(1), Sch 1; and the Aviation Security (Guernsey) Order 1997, SI 1997/2989, art 2(1), Sch 1. See further **SHIPPING AND MARITIME LAW** vol 94 (2008) PARA 1249.

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 Merchant Shipping and Maritime Security Act 1997 s 26(1); Aviation Security Act 1982 s 5.

4 As to the jurisdiction of the courts to try cases of piracy see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 159. Jurisdiction is vested in the Crown Court: see the Supreme Court Act 1981 s 46(2); and **COURTS** vol 10 (Reissue) PARA 625. For the jurisdiction of the courts see PARA 616. The Supreme Court Act 1981 is prospectively renamed the Senior Courts Act 1981 by the Constitutional Reform Act 2005 s 59(5), Sch 11, Pt 1 para 1, as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed.

5 As to the meaning of 'aircraft' for these purposes see PARA 619 note 2; definition applied by the Aviation Security Act 1982 s 5(2).

6 Aviation Security Act 1982 s 5(1).

UPDATE

623 Piracy by or against aircraft

NOTE 4--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/624. Hijacking.

624. Hijacking.

The offence of hijacking is committed when a person on board an aircraft in flight¹ by the use of force or by threats of any kind unlawfully seizes the aircraft or exercises control of it². The offence is committed whatever the person's nationality, whatever the state in which the aircraft is registered³, and whether the aircraft is in the United Kingdom⁴ or elsewhere⁵. However, the offence is not committed if the aircraft is used in military⁶, customs or police service⁷, or if both the place of take off and the place of landing are in the territory of the state in which the aircraft is registered⁸, unless the person seizing or exercising control of the aircraft is a United Kingdom national⁹, or the act is committed in the United Kingdom¹⁰, or the aircraft is registered in the United Kingdom or is used in the military or customs service of the United Kingdom or in the service of any police force in the United Kingdom¹¹.

A person in the United Kingdom who induces or assists in the commission outside the United Kingdom of an act which would constitute the offence of hijacking but for the aircraft concerned being in military, customs or police service use, or both the place of take off and the place of landing being in the territory of the state in which the aircraft is registered, commits an offence¹².

1 For these purposes, the period during which an aircraft is in flight is deemed to include any period from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation and, in the case of a forced landing, any period until the competent authorities take over responsibility for the aircraft and for persons and property on board: Aviation Security Act 1982 s 38(3)(a). 'Property' includes any land, buildings or works, any aircraft or vehicle, and any baggage, cargo or other article of any description: s 38(1).

2 Aviation Security Act 1982 s 1(1). As to the commission of other offences ancillary to a hijacking see PARA 625.

3 As to the registration of aircraft see PARA 367 et seq. The Secretary of State may by order declare that any two or more named states have established an organisation or agency which operates aircraft, and that one of those states has been designated as exercising, for aircraft so operated, the powers of the state of registration; and if such a declaration is made, the state designated as exercising the powers of the state of registration is to be deemed for these purposes to be the state in which any aircraft so operated is registered: see the Aviation Security Act 1982 s 1(4). At the date at which this volume states the law no such order had been made. As to the Secretary of State see PARA 33.

4 As to the meaning of 'United Kingdom' see PARA 30 note 1. For these purposes, the territorial waters of any state are treated as part of its territory: Aviation Security Act 1982 s 1(5).

5 Aviation Security Act 1982 s 1(1). The aircraft's commander can be guilty of this offence if he deviates from his flight schedule as a result of a conspiracy with hijackers: *R v Moussa Membar* [1983] Crim LR 618, CA (decided under the Hijacking Act 1971, which was similarly worded). The maximum penalty is life imprisonment: Aviation Security Act 1982 s 1(3).

6 'Military service' includes naval and air force service: Aviation Security Act 1982 s 38(1).

7 Aviation Security Act 1982 s 1(2)(a).

8 Aviation Security Act 1982 s 1(2)(b). Where the Secretary of State has by order declared that one of two or more named states has been designated as exercising the powers of the state of registration in respect of aircraft operated by those states (see note 3), s 1(2)(b) has effect in relation to any such aircraft as if it referred to the territory of any one of the states so named: see s 1(4).

9 Aviation Security Act 1982 s 1(2)(i). 'United Kingdom national' means a British citizen, a British overseas territories citizen, a British national (overseas), a British overseas citizen, a person who is a British subject

under the British Nationality Act 1981, or a British protected person within the meaning of that Act: Aviation Security Act 1982 s 38(1) (amended by SI 1986/948; and by virtue of the British Overseas Territories Act 2002 s 2(3)). As to British citizens see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 23-43. As to British overseas territories citizens and citizenship (formerly known as British dependent territories citizens and citizenship) see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 44-57. As to British national (overseas) status see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 63-65. As to British overseas citizens see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 8, 58-62. As to British subjects see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 9, 66-71. As to British protected persons see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARAS 10, 72-76.

10 Aviation Security Act 1982 s 1(2)(ii).

11 Aviation Security Act 1982 s 1(2)(iii).

12 Aviation Security Act 1982 s 6(2)(a). This operates without prejudice to the Accessories and Abettors Act 1861 s 8 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 49-51); Aviation Security Act 1982 s 6(4)(a). The maximum penalty is life imprisonment: s 6(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/625. Hijacking-related violence against passengers or crew.

625. Hijacking-related violence against passengers or crew.

Where a person¹ hijacks or attempts to hijack² an aircraft³ outside the United Kingdom⁴ and in the course of that hijack or attempt does any act which if done in the United Kingdom would constitute the offence of murder⁵, attempted murder⁶, manslaughter⁷, causing an explosion⁸, or one of a number of offences against the person⁹, his act constitutes that offence¹⁰.

1 The Aviation Security Act 1982 s 6 applies to persons of any nationality: see s 6(1).

2 As to the offence of hijacking see PARA 624.

3 The Aviation Security Act 1982 s 6 applies to aircraft wherever registered: see s 6(1). As to the registration of aircraft see PARA 367 et seq.

4 As to the meaning of 'United Kingdom' see PARA 30 note 1. For the purposes of the offence of hijacking, the territorial waters of any state are treated as part of its territory: Aviation Security Act 1982 s 1(5).

5 As to the offence of murder see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 89-91.

6 As to attempting to commit an offence see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 71-75.

7 As to the offence of manslaughter see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 91-102.

8 Ie causing an explosion likely to endanger life or property in contravention of the Explosive Substances Act 1833 s 2: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 127.

9 Ie an offence under the Offences against the Person Act 1861 s 18 (shooting or attempting to shoot, or wounding, with intent to do grievous bodily harm, or to resist apprehension: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 118), s 20 (inflicting bodily injury, with or without a weapon: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 120), s 21 (attempting to choke, etc, in order to commit or assist in the committing of any indictable offence: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 121), s 22 (using chloroform, etc, in order to commit or assist in the committing of any indictable offence: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 122), s 23 (maliciously administering poison, etc, so as to endanger life or inflict grievous bodily harm: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 124), s 28 (causing bodily injury by gunpowder: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 125), or s 29 (causing gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person, with intent to do grievous bodily harm: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 126).

10 Aviation Security Act 1982 s 6(1). This is without prejudice to the statutory application of the general criminal law to offences taking place aboard aircraft effected by the Civil Aviation Act 1982 s 92: see PARAS 616, 619, 621.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/626. Threatening the crew of an aircraft.

626. Threatening the crew of an aircraft.

No person aboard an aircraft may use any threatening, abusive or insulting words, or behave in a threatening, abusive, insulting or disorderly manner, towards a member of the crew¹, or intentionally interfere with the performance by a member of the crew of his duties².

1 See the Air Navigation Order 2005, SI 2005/1970, art 78(a), (b); and PARA 526. As to the crew of an aircraft generally see PARA 456 et seq. Contravention of this provision is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale: see art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

2 See the Air Navigation Order 2005, SI 2005/1970, art 78(c); and PARA 526. Contravention of this provision is an offence punishable on summary conviction by a fine not exceeding the statutory maximum: see art 148(6), Sch 14 Pt B. As to the statutory maximum see PARA 43 note 12.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/627. Stowaways.

627. Stowaways.

No person may secrete himself for the purpose of being carried in an aircraft without the consent of either the operator¹ or the commander² of the aircraft or of any other person entitled to give consent to his being carried in the aircraft³.

1 As to the meaning of 'operator' see PARA 437.

2 As to the meaning of 'commander' see PARA 456.

3 Air Navigation Order 2005, SI 2005/1970, art 79. Contravention of this provision is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale: see art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/628. Destroying, damaging or endangering the safety of aircraft.

628. Destroying, damaging or endangering the safety of aircraft.

It is an offence for any person unlawfully¹ and intentionally:

- 525 (1) to destroy an aircraft in service² or so to damage such an aircraft as to render it incapable of flight or as to be likely to endanger its safety in flight³;
- 526 (2) to commit on board an aircraft in flight any act of violence⁴ which is likely to endanger the safety of the aircraft⁵; or
- 527 (3) to place, or cause to be placed, on an aircraft in service any device or substance which is likely to destroy the aircraft or so to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight⁶.

The offences may be committed in the United Kingdom or elsewhere, whatever the nationality of the offender or the state of registration of the aircraft⁷. No offence is committed if the aircraft is used in military⁸, customs or police service unless the act is either committed in the United Kingdom⁹ or is committed outside the United Kingdom by a United Kingdom national¹⁰, although a person in the United Kingdom who induces or assists in the commission outside the United Kingdom of an act which would constitute any of the offences but for the aircraft concerned being in military, customs or police service use commits an offence¹¹.

1 In relation to the commission of an act in the United Kingdom, 'unlawfully' means so as to constitute an offence under the law of the part of the United Kingdom in which the act is committed (Aviation Security Act 1982 s 2(6)(a)), and in relation to an act done outside the United Kingdom means so that it would have been an offence under English law if committed in England (s 2(6)(b)). As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 An aircraft is taken to be in service during the whole of the period which begins with the pre-flight preparation of the aircraft for a flight and ends 24 hours after the aircraft lands having completed that flight, and also at any other time while the aircraft is in flight: Aviation Security Act 1982 s 38(3)(b). As to the period during which an aircraft is in flight see PARA 624 note 1.

3 Aviation Security Act 1982 s 2(1)(a). The maximum penalty, on conviction on indictment, for any offence under s 2 is life imprisonment: s 2(5).

4 I.e. any act done in the United Kingdom which constitutes the offence of murder, attempted murder, manslaughter, culpable homicide or assault, or an offence under the Offences Against the Person Act 1861 s 18, 20-23, 28 or s 29 or under the Explosive Substances Act 1883 s 2, or an act done elsewhere which would constitute such an offence had it been done in the United Kingdom: Aviation Security Act 1982 s 2(7). See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

5 Aviation Security Act 1982 s 2(1)(b). See note 3.

6 Aviation Security Act 1982 s 2(2). Nothing in s 2(2) is to be construed as limiting the scope of the offence under s 2(1), or as constituting attempting or conspiring to commit, or aiding, abetting, counselling or procuring, or being art and part in, the commission of such an offence: s 2(2)(a), (b). See note 3.

7 Aviation Security Act 1982 s 2(3). See note 3.

8 As to the meaning of 'military service' see PARA 624 note 6.

9 Aviation Security Act 1982 s 2(4)(a). See note 3.

10 Aviation Security Act 1982 s 2(4)(b). See note 3. As to the meaning of 'United Kingdom national' see PARA 624 note 9.

11 See Aviation Security Act 1982 s 6(2)(b). This operates without prejudice to the Accessories and Abettors Act 1861 s 8 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 49-51); Aviation Security Act 1982 s 6(4)(a). The maximum penalty for this offence is life imprisonment: s 6(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/629. Other acts endangering the safety of aircraft.

629. Other acts endangering the safety of aircraft.

It is an offence for any person:

- 528 (1) unlawfully¹ and intentionally to destroy or damage any property² used for the provision of air navigation facilities³, or to interfere with the operation of any such property, where the destruction, damage or interference is likely to endanger the safety of aircraft in flight⁴; or
- 529 (2) intentionally to communicate any information which is false, misleading or deceptive in a material particular, where the communication of the information endangers or is likely to endanger the safety of aircraft in flight⁵.

An act does not constitute either of these offences unless it is committed in the United Kingdom⁶ or, where it is committed elsewhere:

- 530 (a) the person committing it is a United Kingdom national⁷;
- 531 (b) the commission of the act endangers or is likely to endanger the safety in flight of a civil aircraft⁸ registered in the United Kingdom⁹ or chartered by demise¹⁰ to a lessee whose principal place of business¹¹ is in the United Kingdom¹²;
- 532 (c) the act is committed on board such an aircraft¹³; or
- 533 (d) the act is committed on board a civil aircraft which lands in the United Kingdom with the person who committed the act still on board¹⁴.

1 As to the meaning of 'unlawfully' see PARA 628 note 1; definition applied by the Aviation Security Act 1982 s 3(8).

2 As to the meaning of 'property' see PARA 624 note 1.

3 'Air navigation facilities' includes any land, building or ship used for the provision of air navigation facilities, and any apparatus or equipment so used whether it is on board an aircraft or elsewhere: Aviation Security Act 1982 s 3(2).

4 Aviation Security Act 1982 s 3(1). A person who commits an offence under s 3 is liable, on conviction on indictment, to imprisonment for life: s 3(7).

If the act is committed outside the United Kingdom and the property is situated outside the United Kingdom and is not used for the provision of air navigation facilities in connection with international air navigation, the offence can only be committed by a United Kingdom national: s 3(6). However, a person in the United Kingdom who induces or assists in the commission outside the United Kingdom of an act which would constitute the offence but for s 3(6) commits an offence: s 6(2)(c). This operates without prejudice to the Accessories and Abettors Act 1861 s 8 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 49-51): Aviation Security Act 1982 s 6(4)(a). The maximum penalty for this offence is life imprisonment: s 6(3). As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the meaning of 'United Kingdom national' see PARA 624 note 9. As to the period during which an aircraft is in flight see PARA 624 note 1.

5 Aviation Security Act 1982 s 3(3). See note 4. It is a defence for the person charged with this offence to prove either that he believed, and had reasonable grounds for believing, that the information was true (s 3(4)(a)) or that when he communicated the information he was lawfully employed to perform duties which consisted of or included the communication of information and that he communicated the information in good faith in the performance of those duties (s 3(4)(b)).

6 Aviation Security Act 1982 s 3(5). See note 4. However, a person in the United Kingdom who induces or assists in the commission outside the United Kingdom of an act which would constitute any of the offences but for s 3(5) commits an offence: s 6(2)(c). This operates without prejudice to the Accessories and Abettors Act

1861 s 8 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 49-51): Aviation Security Act 1982 s 6(4)(a). The maximum penalty for this offence is life imprisonment: s 6(3).

7 Aviation Security Act 1982 s 3(5)(a). See note 4.

8 Is any aircraft other than an aircraft used in military, customs or police service: Aviation Security Act 1982 s 3(8). As to the meaning of 'military service' see PARA 624 note 6.

9 As to the registration of aircraft see PARA 367 et seq.

10 As to the chartering of aircraft see PARA 433 et seq.

11 Or, if he has no place of business, his permanent residence: Aviation Security Act 1982 s 3(5)(b).

12 Aviation Security Act 1982 s 3(5)(b). See note 4.

13 Aviation Security Act 1982 s 3(5)(c). See note 4.

14 Aviation Security Act 1982 s 3(5)(d). See note 4.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/630. Dangerous articles.

630. Dangerous articles.

The following articles¹ may not be carried or brought into any aircraft, aerodrome² or air navigation installation³:

- 534 (1) any firearm⁴;
- 535 (2) any article having the appearance of being a firearm, whether capable of being discharged or not⁵;
- 536 (3) any explosive⁶;
- 537 (4) any article manufactured or adapted, whether in the form of a bomb, grenade or otherwise, to have the appearance of being an explosive, whether capable of producing a practical effect by explosion or not⁷;
- 538 (5) any article marked or labelled so as to indicate that it is or contains an explosive⁸; and
- 539 (6) any other article made or adapted for use for causing injury to or incapacitating a person⁹ or destroying or damaging property¹⁰, or intended by the person having it with him for such use, whether by him or by any other person¹¹.

It is an offence for any person without lawful authority or reasonable excuse¹² to have with him¹³ any such article:

- 540 (a) in any aircraft registered in the United Kingdom wherever it may be¹⁴;
- 541 (b) in any other aircraft at a time when it is in, or in flight over, the United Kingdom¹⁵;
- 542 (c) in any part of an aerodrome in the United Kingdom¹⁶; or
- 543 (d) in any air navigation installation in the United Kingdom which does not form part of an aerodrome¹⁷.

1 'Article' includes any substance, whether in solid or liquid form or in the form of a gas or vapour: Aviation Security Act 1982 s 38(1).

2 As to the meaning of 'aerodrome' see PARA 324 note 5.

3 As to the meaning of 'air navigation installation' see PARA 331 note 4.

A person guilty of an offence under the Aviation Security Act 1982 s 4 is liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both (s 4(4)(a)), or on conviction on indictment to a fine or to imprisonment for a term not exceeding five years or to both (s 4(4)(b)). As to the statutory maximum see PARA 43 note 12. See *R v Burrows* [2004] EWCA Crim 677, [2004] 2 Cr App Rep (S) 473.

4 Aviation Security Act 1982 s 4(2)(a). As to the meaning of 'firearm' see PARA 343 note 11.

5 Aviation Security Act 1982 s 4(2)(a).

6 Aviation Security Act 1982 s 4(2)(b). 'Explosive' means any article manufactured for the purpose of producing a practical effect by explosion, or intended for that purpose by a person having the article with him: s 38(1).

7 Aviation Security Act 1982 s 4(2)(b).

8 Aviation Security Act 1982 s 4(2)(b).

9 A butterfly knife, being designed in a way which enables it to be concealed easily, but brought out speedily into use against a person, thus taking him by surprise, is made for the purpose of causing injury to the person: *DPP v Hynde* [1998] 1 All ER 649, [1998] 1 WLR 1222, DC.

10 As to the meaning of 'property' see PARA 624 note 1.

11 Aviation Security Act 1982 s 4(2)(c).

12 Proof of reasonable excuse lies with the person in possession of the prohibited item: Aviation Security Act 1982 s 4(1).

13 For these purposes, a person who is for the time being in an aircraft, or in part of an aerodrome, is treated as having with him in the aircraft, or in that part of the aerodrome, as the case may be, a prohibited article (notwithstanding that the circumstances may be such that (apart from these provisions) he would not be regarded as having the article with him in the aircraft or in a part of the aerodrome, as the case may be) if (1) where he is in an aircraft, the article, or an article in which it is contained, is in the aircraft and has been caused (whether by him or by any other person) to be brought there as being, or as forming part of, his baggage on a flight in the aircraft or has been caused by him to be brought there as being, or as forming part of, any other property to be carried on such a flight (Aviation Security Act 1982 s 4(3)(a)); or (2) where he is in part of an aerodrome (otherwise than in an aircraft), the article, or an article in which it is contained, is in that or any other part of the aerodrome and has been caused (whether by him or by any other person) to be brought into the aerodrome as being, or as forming part of, his baggage on a flight from that aerodrome or has been caused by him to be brought there as being, or as forming part of, any other property to be carried on such a flight on which he is also to be carried (s 4(3)(b)). Nothing in these provisions may be construed as limiting the circumstances in which a person would, apart from s 4(3), be regarded as having a prohibited article with him: s 4(5).

14 Aviation Security Act 1982 s 4(1)(a).

15 Aviation Security Act 1982 s 4(1)(b). As to the meaning of 'United Kingdom' see PARA 30 note 1. As to the period during which an aircraft is in flight see PARA 624 note 1.

16 Aviation Security Act 1982 s 4(1)(c).

17 Aviation Security Act 1982 s 4(1)(d).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/631. Endangering safety at aerodromes.

631. Endangering safety at aerodromes.

It is an offence for any person by means of any device, substance or weapon:

- 544 (1) intentionally to commit at an aerodrome¹ serving international civil aviation any act of violence² which causes or is likely to cause death or serious personal injury and endangers or is likely to endanger the safe operation of the aerodrome or the safety of persons at the aerodrome³;
- 545 (2) unlawfully⁴ and intentionally to destroy or seriously damage property used for the provision of any facilities at an aerodrome serving international civil aviation, including any apparatus or facilities so used, in such a way as to endanger or be likely to endanger the safe operation of the aerodrome or the safety of persons at the aerodrome⁵;
- 546 (3) unlawfully and intentionally to disrupt the services of such an aerodrome in such a way as to endanger or be likely to endanger the safe operation of the aerodrome or the safety of persons at the aerodrome⁶; or
- 547 (4) unlawfully and intentionally to destroy or seriously damage any aircraft which is at such an aerodrome but is not in service⁷ in such a way as to endanger or be likely to endanger the safe operation of the aerodrome or the safety of persons at the aerodrome⁸.

These are offences whether they are committed in the United Kingdom or elsewhere and whatever the nationality of the offender⁹. Provision is made for the extension of these provisions to specified overseas territories¹⁰, Jersey¹¹ and Guernsey¹².

1 As to the meaning of 'aerodrome' see PARA 175; definition applied by the Aviation and Maritime Security Act 1990 s 1(9).

2 Ie any act done in the United Kingdom which constitutes the offence of murder (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 89-91), attempted murder (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 79-83), manslaughter (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 91-102), culpable homicide or assault (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 147-151), or an offence under the Offences Against the Person Act 1861 ss 18, 20-24, 28, 29 (all as amended) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 118-126), or under the Explosive Substances Act 1883 s 2 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 127), or an act done elsewhere which would constitute such offence had it been done in the United Kingdom: Aviation and Maritime Security Act 1990 s 1(9). As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 Aviation and Maritime Security Act 1990 s 1(1). A person who commits an offence under s 1 is liable on conviction on indictment to life imprisonment: s 1(5).

4 In relation to an act done in the United Kingdom, 'unlawfully' means so as to constitute an offence (apart from these provisions) under the law of the part of the United Kingdom in which the act is committed: Aviation and Maritime Security Act 1990 s 1(9). In relation to an act done outside the United Kingdom, 'unlawfully' means so that the commission of the act would (apart from these provisions) have been an offence under the law of England and Wales if it had been committed in England or Wales: s 1(9).

5 Aviation and Maritime Security Act 1990 s 1(2)(a)(i). See note 3.

6 Aviation and Maritime Security Act 1990 s 1(2)(b). See note 3.

7 As to when an aircraft is taken to be in service see PARA 628 note 2; definition applied by Aviation and Maritime Security Act 1990 s 1(6).

8 Aviation and Maritime Security Act 1990 s 1(2)(a)(ii). See note 3. No offence is, however, committed under s 1(2)(a)(ii) if the aircraft in relation to which the act is committed is used in military, customs or police service, unless the act either is committed in the United Kingdom or is committed outside the United Kingdom by a United Kingdom national: s 1(4). As to the meaning of 'military service' see PARA 624 note 6; definition applied by s 1(9). As to the meaning of 'United Kingdom national' see PARA 624 note 9; definition applied by s 1(9).

9 Aviation and Maritime Security Act 1990 s 1(3). This is, however, subject to s 1(4) (see note 8). See note 3. Proceedings for an offence may not be instituted except by, or with the consent of, the Attorney General: s 1(7) (a). As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

10 See the Aviation and Maritime Security Act 1990 s 51 (amended by the Merchant Shipping Act 1995 s 314(1), Sch 12); and the Aviation Security and Piracy (Overseas Territories) Order 2000, SI 2000/3059, art 3(2), Sch 4. The territories to which the order applies are listed in art 2, Sch 1.

11 See the Aviation and Maritime Security Act 1990 s 51 (as amended: see note 10); and the Aviation Security (Jersey) Order 1993, SI 1993/1251, art 2(2), Sch 2.

12 See the Aviation and Maritime Security Act 1990 s 51 (as amended: see note 10); and the Aviation Security (Guernsey) Order 1997, SI 1997/2989, art 2(2), Sch 2.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/(i) In general/632. Extradition.

632. Extradition.

Under the Extradition Act 2003, each of the territories with which the United Kingdom¹ has extradition arrangements is placed in one of two categories, countries being designated in one or other category by order of the Secretary of State according to the extradition procedures that the United Kingdom has negotiated with each country². A separate set of procedures is provided for each category. Extradition offences are generally identified by prescribed criteria, which include, in most instances, the severity of punishment for offenders³. Extradition is the subject of provisions in some treaties of particular relevance to aviation⁴. Where a territory is not designated within either category of extradition partners but is a party to an international convention to which the United Kingdom is a party (including one of those of particular relevance to aviation), the territory may be so designated by the Secretary of State and is treated in relation to any specified conduct which can constitute a convention offence as if it were a category 2 extradition territory⁵.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 The category 1 or category 2 territories: see the Extradition Act 2003 ss 1, 69; and the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003, SI 2003/3333 (amended by SI 2004/1898; SI 2005/365; SI 2005/2036; SI 2006/3451; and SI 2007/2238); and the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003, SI 2003/3334 (amended by SI 2004/1898; SI 2005/365; SI 2005/2036; SI 2006/3451; and SI 2007/2238). See also the Extradition Act 2003 (Part 3 Designation) Order 2003, SI 2003/3335 (amended by SI 2005/1127), in relation to Part 3 warrants (outgoing extradition requests from the United Kingdom made to a category 1 territory). See generally **EXTRADITION**.

3 See the Extradition Act 2003 ss 64-66, 136-138; and **EXTRADITION**.

4 See PARA 622.

5 See the Extradition Act 2003 s 193; and **EXTRADITION**. For territories, conventions and conduct so specified, see the Extradition Act 2003 (Parties to International Conventions) Order 2005, SI 2005/46.

UPDATE

632 Extradition

NOTE 2--SI 2003/3334 further amended: SI 2008/1589.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/ (ii) Offences involving Alcohol and Drugs and being Unfit for Duty/633. Scope of legislation.

(ii) Offences involving Alcohol and Drugs and being Unfit for Duty

633. Scope of legislation.

Part 5 of the Railways and Transport Safety Act 2003¹ applies in relation to a function or activity performed or carried out in the United Kingdom², and a flight function performed or flight activity carried out on a United Kingdom aircraft³. Her Majesty may by Order in Council direct that a provision of Part 5 is to apply (with or without modification) (1) to a function or activity performed or carried out in any of the Channel Islands or a British overseas territory⁴; (2) to a function performed or activity carried out on an aircraft which is registered, in accordance with an enactment about aircraft, in any of the Channel Islands or a British overseas territory⁵.

1 le the Railways and Transport Safety Act 2003 Pt 5 (ss 92-102).

2 As to the meaning of 'United Kingdom' see PARA 30 note 1.

3 See the Railways and Transport Safety Act 2003 ss 102(1), (2), 121(e).

4 As to British overseas territories see **COMMONWEALTH** vol 13 (2009) PARA 702.

5 Railways and Transport Safety Act 2003 ss 102(3). For Crown and military application see ss 100, 101.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/ (ii) Offences involving Alcohol and Drugs and being Unfit for Duty/634. Being unfit for duty.

634. Being unfit for duty.

A person commits an offence if (1) he performs an aviation function¹ at a time when his ability to perform the function is impaired because of drink or drugs²; or (2) he carries out an activity which is ancillary to an aviation function³ at a time when his ability to perform the function is impaired because of drink or drugs⁴.

1 As to aviation functions see PARA 636.

2 In the Railways and Transport Safety Act 2003 s 92 'drug' includes any intoxicant other than alcohol: s 92(2). As to penalties see PARA 637.

3 As to functions ancillary to aviation functions see PARA 636.

4 Railways and Transport Safety Act 2003 s 92(1). Section 94 (see PARA 636) defines 'aviation function' and 'ancillary activity' for the purposes of Pt 5 (ss 92-102): s 92(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/ (ii) Offences involving Alcohol and Drugs and being Unfit for Duty/635. Prescribed limit.

635. Prescribed limit.

A person commits an offence if (1) he performs an aviation function¹ at a time when the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit; or (2) he carries out an activity which is ancillary to an aviation function² at a time when the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit³.

1 As to aviation functions see PARA 636.

2 As to functions ancillary to aviation functions see PARA 636.

3 Railways and Transport Safety Act 2003 s 93(1). The prescribed limit of alcohol is (subject to s 93(3)) (1) in the case of breath, 9 microgrammes of alcohol in 100 millilitres; (2) in the case of blood, 20 milligrammes of alcohol in 100 millilitres; and (3) in the case of urine, 27 milligrammes of alcohol in 100 millilitres: s 93(2). In relation to the aviation function specified in s 94(1)(h) (see PARA 636, head (8) in the text) the prescribed limit is (a) in the case of breath, 35 microgrammes of alcohol in 100 millilitres; (b) in the case of blood, 80 milligrammes of alcohol in 100 millilitres; and (c) in the case of urine, 107 milligrammes of alcohol in 100 millilitres: s 93(3). The Secretary of State may make regulations amending s 93(2) or (3): s 93(4). As to regulations under Pt 5 (ss 92-102) generally see s 99. As to the Secretary of State see PARA 33.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/ (ii) Offences involving Alcohol and Drugs and being Unfit for Duty/636. Aviation functions.

636. Aviation functions.

For the purposes of Part 5 of the Railways and Transport Safety Act 2003¹ the following (and only the following) are aviation functions: (1) acting as a pilot² of an aircraft during flight; (2) acting as flight navigator³ of an aircraft during flight; (3) acting as flight engineer⁴ of an aircraft during flight; (4) acting as flight radio-telephony operator⁵ of an aircraft during flight; (5) acting as a member of the cabin crew⁶ of an aircraft during flight; (6) attending the flight deck of an aircraft during flight to give or supervise training, to administer a test, to observe a period of practice or to monitor or record the gaining of experience; (7) acting as an air traffic controller⁷ in pursuance of a licence granted under or by virtue of an enactment (other than a licence granted to a student)⁸; and (8) acting as a licensed aircraft maintenance engineer⁹.

For the purposes of Part 5 of the Railways and Transport Safety Act 2003 a reference to an activity which is ancillary to an aviation function is a reference to anything which falls to be treated as such by virtue of the provisions below¹⁰. An activity will be treated as ancillary to an aviation function if it is undertaken (a) by a person who has reported for a period of duty in respect of the function; and (b) as a requirement of, for the purpose of or in connection with the performance of the function during that period of duty¹¹. A person who in accordance with the terms of an employment or undertaking holds himself ready to perform an aviation function if called upon will be treated as carrying out an activity ancillary to the function¹². Where a person sets out to perform an aviation function, anything which he does by way of preparing to perform the function will be treated as an activity ancillary to it¹³.

For these purposes it is immaterial whether a person performs a function or carries out an activity in the course of an employment or trade or otherwise¹⁴. The Secretary of State¹⁵ may by regulations amend the above provisions¹⁶ and make an amendment of Part 5 which is consequential on such an amendment¹⁷.

1 le the Railways and Transport Safety Act 2003 ss 92-102.

2 As to pilots see PARAS 438-440, 444.

3 As to flight navigators see PARAS 439, 441, 444.

4 As to flight engineers see PARAS 439, 441, 444.

5 As to flight radio-telephony operators see PARAS 439, 444.

6 As to the meaning of 'cabin crew' see PARA 456.

7 As to the meaning of 'acting as an air traffic controller' see PARA 161 note 2.

8 As to student air traffic controllers see PARAS 161, 163.

9 Railways and Transport Safety Act 2003 s 94(1). For the purposes of head (8) in the text a person acts as a licensed aircraft maintenance engineer if (1) he issues a document relating to the maintenance, condition or use of an aircraft or equipment in reliance on a licence granted under or by virtue of an enactment relating to aviation; or (2) he carries out or supervises work on an aircraft or equipment with a view to, or in connection with, the issue by him of a document of the kind specified in head (1): s 94(2).

10 le by virtue of the Railways and Transport Safety Act 2003 s 94(4)-(6): s 94(3).

11 Railways and Transport Safety Act 2003 s 94(4).

- 12 Railways and Transport Safety Act 2003 s 94(5).
- 13 Railways and Transport Safety Act 2003 s 94(6).
- 14 Railways and Transport Safety Act 2003 s 94(7).
- 15 As to the Secretary of State see PARA 33.
- 16 Ie the Railways and Transport Safety Act 2003 s 94.
- 17 Railways and Transport Safety Act 2003 s 94(8). As to regulations under Pt 5 generally see s 99.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/ (ii) Offences involving Alcohol and Drugs and being Unfit for Duty/637. Penalty.

637. Penalty.

A person guilty of an offence under Part 5 of the Railways and Transport Safety Act 2003¹ will be liable (1) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both; or (2) on summary conviction, to a fine not exceeding the statutory maximum².

1 Ie the Railways and Transport Safety Act 2003 ss 92-102.

2 Railways and Transport Safety Act 2003 s 95. As to the statutory maximum see PARA 43 note 12.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/ (ii) Offences involving Alcohol and Drugs and being Unfit for Duty/638. Specimens, etc.

638. Specimens, etc.

The provisions of the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988 relating to the taking of specimens¹ have effect with modifications² for the purposes of offences under Part 5³ of the Railways and Transport Safety Act 2003⁴.

1 Ie the Road Traffic Act 1988 s 6 (power to administer preliminary tests), ss 6A-6E (preliminary breath test, impairment test and drug test), s 7 (provision of specimen), s 7A (specimen of blood taken from person incapable of consenting), s 8 (choice of specimen of breath), s 9 (protection for hospital patient), s 10 (detention of person affected by alcohol or drug) and s 11 (interpretation); and the Road Traffic Offenders Act 1988 s 15 (use of specimens) and s 16 (documentary evidence). See **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARAS 979 et seq, 991.

2 Ie with specified modifications and any other necessary modifications.

3 Ie the Railways and Transport Safety Act 2003 ss 92-102. See PARA 633 et seq.

4 Railways and Transport Safety Act 2003 s 96(1). As to the modifications see s 96(1) Table. The Secretary of State may by regulations amend the table in s 96(1) so as (1) to add a provision relating to an offence which concerns alcohol or drugs in relation to road traffic; (2) to add, remove or amend a modification (whether or not in connection with an amendment of a provision specified in the table): s 96(2). As to regulations under Pt 5 generally see s 99. For the purpose of the application by s 96(1) of a provision listed in the table in s 96(1), the provision will extend to the whole of the United Kingdom, and a reference to the provision will be treated, unless the context otherwise requires, as including a reference to the provision as applied: s 96(3).

UPDATE

638 Specimens, etc

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/ (ii) Offences involving Alcohol and Drugs and being Unfit for Duty/639. Arrest without warrant.

639. Arrest without warrant.

A constable may arrest a person without a warrant if the constable reasonably suspects that the person (1) is committing an offence¹; or (2) has committed such an offence and is still under the influence of drink or drugs². But a person may not be so arrested while he is at a hospital³ as a patient⁴.

1 Under the Railways and Transport Safety Act 2003 s 92 (see PARA 634).

2 Railways and Transport Safety Act 2003 s 97(1).

3 In the Railways and Transport Safety Act 2003 s 97(2) 'hospital' means an institution which provides medical or surgical treatment for in-patients or out-patients: s 97(3).

4 Railways and Transport Safety Act 2003 s 97(2).

Arrest under s 97 will be treated as arrest for an offence for the purposes of (1) the Police and Criminal Evidence Act 1984 Pt IV (ss 34-51) (detention); and (2) the Police and Criminal Evidence (Northern Ireland) Order 1989, SI 1989/1341 (NI 12) Pt V (detention): Railways and Transport Safety Act 2003 s 97(4). See further **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(2) OFFENCES/ (ii) Offences involving Alcohol and Drugs and being Unfit for Duty/640. Right of entry.

640. Right of entry.

A constable in uniform may board an aircraft if he reasonably suspects that he may wish to exercise a power¹ in respect of a person who is or may be on the aircraft². A constable in uniform may enter any place if he reasonably suspects that he may wish to exercise a power³ in respect of a person who is or may be in that place⁴. For the purposes of boarding an aircraft or entering a place under these provisions a constable (1) may use reasonable force; (2) may be accompanied by one or more persons⁵.

1 By virtue of the Railways and Transport Safety Act 2003 s 96 (see PARA 638) or under s 97 (see PARA 639).

2 Railways and Transport Safety Act 2003 s 98(1).

3 By virtue of the Railways and Transport Safety Act 2003 s 96 or under s 97.

4 Railways and Transport Safety Act 2003 s 98(2).

5 Railways and Transport Safety Act 2003 s 98(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(3) POWERS OF AIRCRAFT COMMANDER/641. Authority of aircraft commander.

(3) POWERS OF AIRCRAFT COMMANDER

641. Authority of aircraft commander.

Every person in an aircraft must obey all lawful commands which the commander¹ of that aircraft may give for the purpose of securing the safety of the aircraft and of persons or property carried in it, or the safety, efficiency or regularity of air navigation².

¹ As to the meaning of 'commander' see PARA 456.

² Air Navigation Order 2005, SI 2005/1970, art 77. Contravention of this provision is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale: see art 148(5), Sch 14 Pt A. As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(3) POWERS OF AIRCRAFT COMMANDER/642. Commander's powers as to offences.

642. Commander's powers as to offences.

For the purposes of any proceedings before any court in the United Kingdom¹, if the commander² of an aircraft³ in flight⁴, wherever that aircraft may be, has reasonable grounds to believe in respect of any person on board the aircraft:

- 548 (1) that the person has done or is about to do any act on the aircraft while it is in flight which jeopardises or may jeopardise the safety of the aircraft or of persons or property on board the aircraft or good order and discipline on board the aircraft⁵; or
- 549 (2) that the person has done on the aircraft while in flight any act which in the opinion of the commander is a serious offence under the law⁶ of the state of registration⁷,

he may take in respect of that person such reasonable measures, including restraint of his person, as may be necessary to protect the safety of the aircraft or of persons or property on board⁸, to maintain good order and discipline on board the aircraft⁹, or to enable the commander to disembark or deliver the person¹⁰.

1 As to the meaning of 'United Kingdom' see PARA 30 note 1.

2 For these purposes, 'commander', in relation to an aircraft, means the member of the crew designated as commander of that aircraft by the operator or, failing such a person, the person who is for the time being the pilot in command of the aircraft (Civil Aviation Act 1982 s 94(7)); and 'pilot in command' means the person who for the time being is in charge of the piloting of the aircraft without being under the direction of any other pilot in the aircraft (s 94(7)). As to the crew of an aircraft generally see PARA 456 et seq. As to the meaning of 'operator' see PARA 437.

3 As to the meaning of 'aircraft' see PARA 619 note 2; definition applied by the Civil Aviation Act 1982 s 94(7).

4 As to the period during which an aircraft is in flight see PARA 619 note 3; definition applied by the Civil Aviation Act 1982 s 94(7). For these purposes, the period during which an aircraft is in flight is also deemed to include any period from the moment when all external doors, if any, of the aircraft are closed following embarkation for a flight until the moment when any such door is opened for disembarkation after that flight (s 94(8)(a)) and, if the aircraft makes a forced landing, any period thereafter until the time when competent authorities of the country in which the forced landing took place take over the responsibility for the aircraft and for the persons and property on board the aircraft (s 94(8)(b)). If the forced landing takes place in the United Kingdom, this means the time when a constable arrives at the place of landing: s 94(8). Reference to a country or its territorial limits includes reference to any territorial waters of that country: s 106(1).

5 Civil Aviation Act 1982 s 94(1), (2)(a).

6 The law must not be a law of a political nature or based on racial or religious discrimination: Civil Aviation Act 1982 s 94(2)(b).

7 Civil Aviation Act 1982 s 94(1), (2)(b). For these purposes, any British-controlled aircraft is deemed to be registered in the United Kingdom, whether or not it is in fact so registered and whether or not it is in fact registered in some other country: s 94(2). As to the meaning of 'British-controlled aircraft' see PARA 619 note 2; definition applied by s 94(7). As to the registration of aircraft see PARA 367 et seq.

8 Civil Aviation Act 1982 s 94(1), (2)(i).

9 Civil Aviation Act 1982 s 94(1), (2)(ii).

10 Civil Aviation Act 1982 s 94(1), (2)(iii). As to disembarking and delivering see PARAS 645-646.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(3) POWERS OF AIRCRAFT COMMANDER/643. Restraint of offenders.

643. Restraint of offenders.

Any member of the crew¹ and any other person on board an aircraft² may, at the request or with the authority of the aircraft commander³, render assistance in restraining any person whom the commander is entitled to restrain⁴. Any crew member must, if so required by the commander, render such assistance⁵. Any member of the crew or any other person on board the aircraft may also, while the aircraft is in flight⁶ and without the commander's authority, take, with respect to any person on board the aircraft, any measures which the commander would have power to take⁷ and which the person acting has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board⁸.

1 As to the crew of an aircraft generally see PARA 456 et seq.

2 As to the meaning of 'aircraft' see PARA 619 note 2; definition applied by the Civil Aviation Act 1982 s 94(7).

3 As to the meaning of 'commander' for these purposes see PARA 642 note 2.

4 Civil Aviation Act 1982 s 94(3). For the commander's entitlement to restrain persons aboard aircraft see PARA 642.

5 Civil Aviation Act 1982 s 94(3).

6 See PARA 642 note 4.

7 As to these powers see PARA 642.

8 Civil Aviation Act 1982 s 94(3).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(3) POWERS OF AIRCRAFT COMMANDER/644. Duty to terminate restraint.

644. Duty to terminate restraint.

Any restraint imposed on any person on board an aircraft¹ must end when the aircraft first thereafter ceases to be in flight² unless, before or as soon as is reasonably practicable after that time, the aircraft's commander³ causes the competent authorities of the country of landing to be notified that a person on board the aircraft is under restraint and of the reasons for that restraint⁴. Subject to such notification, the restraint may then be continued for any period (including the period of any further flight), between the time of this first landing and the first occasion thereafter on which the commander is able with any requisite consent of the appropriate authorities to disembark⁵ or deliver⁶ the person under restraint⁷, or if the person under restraint agrees to continue his journey under restraint on board that aircraft⁸.

1 See PARAS 642-643. As to the meaning of 'aircraft' see PARA 619 note 2; definition applied by the Civil Aviation Act 1982 s 94(7).

2 See PARA 642 note 4.

3 As to the meaning of 'commander' for these purposes see PARA 642 note 2.

4 Civil Aviation Act 1982 s 94(4).

5 See PARA 645.

6 See PARA 646.

7 Civil Aviation Act 1982 s 94(4)(a).

8 Civil Aviation Act 1982 s 94(4)(b).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(3) POWERS OF AIRCRAFT COMMANDER/645. Commander's powers to disembark offenders.

645. Commander's powers to disembark offenders.

An aircraft commander¹ may disembark any person on board the aircraft in any country in which the aircraft may be if he has reasonable grounds to believe:

- 550 (1) that the person in question has done or was about to do acts, while the aircraft was in flight², which might have jeopardised or did jeopardise the safety of the aircraft or of persons or property on board, or good order and discipline on board³; and
- 551 (2) that it is necessary to do so in order to protect the safety of the aircraft or of persons or property on board, or good order and discipline on board⁴.

If the commander disembarks a person from a British-controlled aircraft⁵ in any country, or from any other aircraft in the United Kingdom⁶, he must report the fact of, and the reasons for, that disembarkation to an appropriate authority in the country of disembarkation⁷ and to the appropriate diplomatic or consular office of the country of nationality of that person⁸.

1 As to the meaning of 'aircraft' see PARA 619 note 2; definition applied by the Civil Aviation Act 1982 s 94(7). As to the meaning of 'commander' for these purposes see PARA 642 note 2.

2 See PARA 642 note 4.

3 Civil Aviation Act 1982 s 94(5)(a)(i).

4 Civil Aviation Act 1982 s 94(5)(a)(ii).

5 As to the meaning of 'British-controlled aircraft' see PARA 619 note 2; definition applied by the Civil Aviation Act 1982 s 94(7).

6 As to the meaning of 'United Kingdom' see PARA 30 note 1.

7 Civil Aviation Act 1982 s 94(6)(a)(i). If the commander fails without reasonable cause to comply with s 94(6), he is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 94(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 50 note 8.

8 Civil Aviation Act 1982 s 94(6)(a)(ii). See note 7.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(3) POWERS OF AIRCRAFT COMMANDER/646. Commander's powers to deliver up offenders.

646. Commander's powers to deliver up offenders.

An aircraft commander's¹ power to deliver up a person extends to any person who the commander has reasonable grounds to believe has done on the aircraft while in flight² any act which in the commander's opinion is a serious offence under the law of the country in which the aircraft is registered³. The commander may deliver the person concerned in the United Kingdom⁴ to a constable or immigration officer⁵, or, in any other convention country⁶, to an officer of that country having functions corresponding to the functions in the United Kingdom either of a constable or of an immigration officer⁷. If he intends to deliver up such a person in the United Kingdom, the commander must, before or as soon as reasonably practicable after landing, give notification of his intention and the reasons for it to a constable or immigration officer⁸.

1 As to the meaning of 'aircraft' see PARA 619 note 2; definition applied by the Civil Aviation Act 1982 s 94(7). As to the meaning of 'commander' for these purposes see PARA 642 note 2.

2 See PARA 642 note 4.

3 Civil Aviation Act 1982 s 94(5)(b). As to the nature of the law concerned see PARA 642 note 6.

4 As to the meaning of 'United Kingdom' see PARA 30 note 1.

5 Civil Aviation Act 1982 s 94(5)(b)(i).

6 'Convention country' means a country in which the Convention on Offences and certain other Acts Committed on board Aircraft (Tokyo, 14 September 1963; TS 136 (1969); Cmnd 4230) (superseding Misc 3 (1964); Cmnd 2261) (see PARA 13) is for the time being in force: Civil Aviation Act 1982 s 105(1). Her Majesty may by Order in Council certify that any specified country is for the time being a convention country and any such Order in Council for the time being in force is conclusive evidence that the country in question is for the time being a convention country: s 105(1). For a list of the convention countries see the Tokyo Convention (Certification of Countries) Order 1977, SI 1977/1258; and the Tokyo Convention (Certification of Countries) (Supplementary) Order 1978, SI 1978/1534.

7 Civil Aviation Act 1982 s 94(5)(b)(ii).

8 Civil Aviation Act 1982 s 94(6)(b). If the commander of a British-controlled aircraft intends to deliver up such a person in a convention country other than the United Kingdom he must notify an officer of that country having functions corresponding to the functions in the United Kingdom either of a constable or of an immigration officer: s 94(6)(b)(i). Whether the delivery is to be effected in the United Kingdom or in another convention country, the commander must also notify the appropriate diplomatic or consular office of the country of nationality of that person: s 94(6)(b)(ii). As to the meaning of 'British-controlled aircraft' see PARA 619 note 2; definition applied by s 94(7). If the commander fails without reasonable cause to comply with s 94(6), he is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 94(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 50 note 8.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(4) CIVIL LIABILITIES GENERALLY/647. Classification of liabilities.

(4) CIVIL LIABILITIES GENERALLY

647. Classification of liabilities.

The civil liabilities of owners and operators of aircraft fall broadly into two categories: (1) the liabilities of the owner or operator, as carrier, to persons who are, or whose goods are, carried in the aircraft¹; and (2) those liabilities of the owner or operator which arise independently of the carriage of persons or goods in the aircraft. The second category includes all liabilities for damage caused to persons or property not being carried in the aircraft, whether such persons or property are in the air, in another aircraft, or on the surface of the ground or water².

The civil liabilities of other persons relating to the operation of aircraft are governed by the common law and by statutes of general application³.

1 As to the liabilities of carriers by air see PARA 615 et seq.

2 As to these liabilities see PARA 648 et seq.

3 See eg *Gurtner v Beaton* [1993] 2 Lloyd's Rep 369, CA (which included a claim in negligence against an air traffic controller); *Lambson Aviation Ltd (t/a Knight Air Scheduled Services) v Embraer Empresa Brasileira de Aeronautica SA* [2001] All ER (D) 152 (Oct), (11 October 2001) Lexis, QBD (claim for a contribution made under the Civil Liability (Contribution) Act 1978 by an air carrier against an aircraft manufacturer and an aircraft component manufacturer in respect of claims brought against it as a result of a fatal air accident).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(4) CIVIL LIABILITIES GENERALLY/648. Collisions.

648. Collisions.

Statutory provisions regulate the liability of the owner or operator of an aircraft which, while taking off, in flight or landing, collides with another aircraft which is on the surface and is not taking off or landing, or with any other type of vehicle or vessel on the surface¹. The provisions do not, however, cover collisions between aircraft in the air (except in so far as the collision causes damage to persons or property on the surface), between aircraft on the surface when neither is taking off or landing, or between an aircraft on the surface which is not taking off or landing and any other type of vehicle or vessel on the surface.

Where the statutory provisions do not apply, the liabilities of the parties to the collision are governed by the ordinary rules of negligence².

¹ See PARA 654.

² See generally **NEGLIGENCE**. See also *Blankley v Godley* [1952] 1 All ER 436n (collision at aerodrome between aircraft on ground and stationary motor car). As to breach of statutory rules and regulations as evidence of negligence see PARAS 650-651. Where, in a collision, damage is caused to passengers or cargo carried in one of the aircraft and the collision is caused entirely by the fault of that aircraft, the liability of the owner or operator to the passengers or owners of the cargo will in most cases be governed by the carriage by air rules, and may be limited; but where the other aircraft is in any degree at fault, the passengers or owners of the cargo will be able to recover unlimited damages from the owner or operator of that aircraft. As to the legislation governing carriage by air see **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 121 et seq.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(4) CIVIL LIABILITIES GENERALLY/649. Accidents occurring on the surface at aerodromes.

649. Accidents occurring on the surface at aerodromes.

Accidents occurring on the surface of the ground at aerodromes, other than collisions between aircraft or between aircraft and other types of vehicle¹, may, according to the circumstances, be governed by statutory provisions or by common law rules. The carriage by air rules cover accidents to passengers which take place in the course of any of the operations of embarking or disembarking², and they cover damage to cargo which occurs during its carriage by air³. Statutory provisions also apply where damage is done to persons or property on the surface by an aircraft in flight, taking off or landing⁴. In cases not governed by statutory provisions, liabilities are normally governed by the ordinary rules of negligence⁵.

1 See PARA 648 note 2.

2 See **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 150.

3 See **CARRIAGE AND CARRIERS** vol 7 (2008) PARA 152.

4 See PARA 654.

5 See generally **NEGLIGENCE**. See also *Waring v East Anglian Flying Services Ltd* [1951] WN 55; cf *Olsen v Corry and Gravesend Aviation Ltd* [1936] 3 All ER 241.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(4) CIVIL LIABILITIES GENERALLY/650. Breach of statutory rules and regulations.

650. Breach of statutory rules and regulations.

Where the liability of the owner or operator of an aircraft is to be decided by the common law rules of negligence¹, a failure on his part, or on the part of any person for whose negligence he is vicariously responsible, to comply with any of the statutory rules and regulations applicable in the circumstances of the case may be relevant as being evidence of negligence². Thus, in the case of collisions particularly³, a breach of the Rules of the Air⁴ will afford evidence of negligence, if there is a sufficient causal connection between the breach and the collision. Similarly, in the case of all accidents, those requirements of the Air Navigation Order 2005⁵ and of the regulations made under it⁶ which are designed to promote the safety of flying⁷ will often be regarded as indicating the standard of care which owners and operators of aircraft ought to meet, and failure to comply with any such requirement where compliance might have averted the accident will be strong evidence of negligence⁸.

1 See PARA 647.

2 As to breaches of statutory duty which of themselves give rise to a cause of action see PARA 651; and **TORT** vol 97 (2010) PARA 495 et seq. As to vicarious liability generally see **TORT** vol 97 (2010) PARAS 506, 680 et seq.

3 As to the classes of collision where liability is governed by negligence see PARA 648.

4 I.e. the Rules of the Air Regulations 2007, SI 2007/734: see PARA 357. These rules contain detailed aerodrome traffic rules: see PARAS 303-306.

5 I.e. the Air Navigation Order 2005, SI 2005/1970.

6 As to regulations made under the Air Navigation Order 2005, SI 2005/1970, see PARA 353 note 6.

7 Eg the provisions as to the precautionary action to be taken before flight (see PARA 494 et seq), as to weight and performance requirements (see PARAS 500-501), as to loading (see PARAS 502-504), as to the training of crews (see PARA 507), as to operations manuals (see PARAS 509-510), and as to minimum weather conditions (see PARAS 511-516).

8 Cf *Blamires v Lancashire and Yorkshire Rly Co* (1873) LR 8 Exch 283; *Gorris v Scott* (1874) LR 9 Exch 125 at 130-131 per Pollock B; *Phillips v Britannia Hygienic Laundry Co Ltd* [1923] 1 KB 539 at 548-549 per McCardie J (affd [1923] 2 KB 832, CA).

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(4) CIVIL LIABILITIES GENERALLY/651. Actionable breach of statutory duty.

651. Actionable breach of statutory duty.

In some cases the failure by the owner or operator of an aircraft, or by some person for whom he is vicariously responsible, to comply with a statutory duty imposed on him may of itself give a right of action to a person who has suffered damage by reason of that failure¹. Whether such a right of action arises depends in each case upon the true construction of the statutory provision in question².

1 Cf *Lochgelly Iron and Coal Ltd v M'Mullan* [1934] AC 1, HL; *Monk v Warbey* [1935] 1 KB 75, CA; *London Passenger Transport Board v Upson* [1949] AC 155, [1949] 1 All ER 60, HL; *Solomons v R Gertzenstein Ltd* [1954] 2 QB 243, [1954] 2 All ER 625, CA. See generally **TORT** vol 97 (2010) PARA 495 et seq.

2 See generally **TORT** vol 97 (2010) PARA 498 et seq. It is only where the provision was enacted for the benefit of a particular class of persons, of whom the claimant is a member, that such a right of action may arise; and, if a penalty is imposed for breach of the provision, that is prima facie the only remedy, though the general rule is subject to exceptions: see eg *Cutler v Wandsworth Stadium Ltd* [1949] AC 398, [1949] 1 All ER 544, HL, per Lord Simonds.

In a few cases a breach of the statutory rules and regulations of the class referred to in PARA 650 has been held to give a civil right of action to an injured person: see *Hesketh v Liverpool Corpn* [1940] 4 All ER 429 (breach by aerodrome proprietor of statutory requirements as to lighting and obstructions at aerodromes gave right of action to injured pilot); *Dominion Air Lines Ltd v Strand* [1933] NZLR 1, NZ CA (breach of a New Zealand provision requiring the pilot of a passenger-carrying aircraft to hold a special class of licence). Cf, to the contrary, *Rockland Airways v Miller* (1959) 19 DLR (2d) 683.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(5) DAMAGE TO THIRD PARTIES ON THE SURFACE/652. International conventions.

(5) DAMAGE TO THIRD PARTIES ON THE SURFACE

652. International conventions.

In 1933 a convention was signed at Rome for the purpose of regulating in a uniform manner liability for damage caused by aircraft to third parties on the surface, with a view to regulating the incidence of liability and providing for the limitation of liability and for compulsory insurance¹. It has not, however, been ratified by the United Kingdom². In 1952 a further convention³ was drawn up to supersede and improve that of 1933, but it too has not yet been ratified by the United Kingdom⁴.

An amending protocol, to which the United Kingdom is not a party, was signed in Montreal in 1978⁵. Among other provisions, it greatly increases the limits of liability and expresses them in terms of special drawing rights.

1 See the International Convention for the Unification of Certain Rules Relating to Damage Caused by Aircraft to Third Parties on the Surface (Rome, 23 May 1933; Misc 6 (1935); Cmd 5056); and PARA 10.

2 The Rome Convention (1933) was in fact ratified by only seven states. It was at one time intended to give effect to the Convention in the United Kingdom. The necessary enabling powers were enacted in the Civil Aviation Act 1949 but were never brought into force and have been repealed.

3 The Convention Relating to Damage Caused by Foreign Aircraft to Third Parties on the Surface (Rome, 7 October 1952; Misc 7 (1953); Cmd 8886); and PARA 10.

4 The Rome Convention (1952) has been ratified by 48 states and came into force on 4 February 1958.

5 See the Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface signed at Rome on 7 October 1952 (Montreal, 23 September 1978). The Protocol came into force on 25 July 2002.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(5) DAMAGE TO THIRD PARTIES ON THE SURFACE/653. Exclusion of liability for trespass and nuisance.

653. Exclusion of liability for trespass and nuisance.

No action lies in respect of trespass¹ or in respect of nuisance² by reason only of the flight of an aircraft over any property³ at a height above the ground which, having regard to wind, weather and all the circumstances of the case⁴ is reasonable⁵, or by reason only of the ordinary incidents of such flight⁶, so long as the provisions of the Air Navigation Order 2005⁷ and the statutory provisions relating to dangerous flying⁸ are duly complied with⁹.

1 As to trespass see generally **TORT** vol 97 (2010) PARA 562 et seq. As to trespass to airspace see *Lord Bernstein of Leigh v Skyviews and General Ltd* [1978] QB 479, [1977] 2 All ER 902; *Staden v Tarjanyi* (1980) 78 LGR 614, CA.

2 As to nuisance see generally **NUISANCE**. See also *Steel-Maitland v British Airways Board* 1981 SLT 110.

3 The flight must be over, and not merely in the vicinity of, a particular property. See however *Roedean School Ltd v Cornwall Aviation Co Ltd* (1926) Times, 3 July.

4 These include, it seems, the circumstance that the aircraft is landing or taking off.

5 For statutory provisions as to the heights which aircraft must maintain see PARAS 576-580.

6 'Ordinary incidents of flight' will cover eg noise and vibration arising from the flight. If, however, vibration caused 'material damage', liability would arise under the Civil Aviation Act 1982 s 76(2): see PARA 654.

7 Ie the Air Navigation Order 2005, SI 2005/1970, and any regulations made under it: see PARA 353.

8 Ie the Civil Aviation Act 1982 s 81: see PARA 524.

9 Civil Aviation Act 1982 s 76(1). This provision applies to Crown aircraft: Civil Aviation (Crown Aircraft) Order 1970, SI 1970/289, art 2; Interpretation Act 1978 ss 17(2)(a), 23(1), (2). As to common law rights of action see, however, PARAS 657-658.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(5) DAMAGE TO THIRD PARTIES ON THE SURFACE/654. Statutory liability for material damage to persons or property.

654. Statutory liability for material damage to persons or property.

Where material¹ loss or damage² is caused³ to any person or property on land or water by, or by a person in, or an article⁴, animal or person falling from, an aircraft while in flight, taking off or landing⁵, then unless the loss or damage was caused or contributed to by the negligence of the person by whom it was suffered⁶, damages are recoverable in respect of the loss or damage without proof of negligence or intention or other cause of action, as if the loss or damage had been caused by the wilful act, neglect or default of the owner⁷ of the aircraft⁸.

Where, however, material loss or damage is thus caused and the circumstances are such that damages are recoverable in respect of that loss or damage by virtue only of the provisions described above, and a legal liability is created in some person other than the owner⁹ to pay damages in respect of the loss or damage, the owner is entitled to be indemnified by that other person against any claim in respect of that loss or damage¹⁰.

1 The term 'material' appears to be synonymous with 'physical'; the scope of recovery for the loss or damage would seem to depend on the general law as to damages in torts: see generally **DAMAGES; NEGLIGENCE**.

2 'Loss or damage' includes, in relation to persons, loss of life and personal injury: Civil Aviation Act 1982 s 105(1). 'Loss or damage' also includes psychiatric injury: *Glen v Korean Airlines Co Ltd* [2003] EWHC 643 (QB), [2003] QB 1386, [2003] 3 All ER 621.

3 See *Greenfield v Law* [1955] 2 Lloyd's Rep 696; cf *Southgate v Commonwealth of Australia* (1987) 13 NSWLR 188.

4 See *Weedair (NZ) Ltd v Walker* [1961] NZLR 153, NZ CA (where it was held under the similarly worded New Zealand statute that 'article' includes a chemical liquid). See also *Steel-Maitland v British Airways Board* 1981 SLT 110.

5 It seems that 'taking off' starts when taxiing ends and power is applied for take off (see *Blankley v Godley* [1952] 1 All ER 436n), and that landing ends when the aircraft reaches the end of its landing run and begins to taxi.

6 As to contributory negligence see **NEGLIGENCE** vol 78 (2010) PARA 78 et seq. The burden is on the owner of the aircraft which is in flight, taking off or landing to show that the damage was caused or contributed to by the person suffering the injury: cf *Cubitt and Terry v Gower* (1933) 47 Ll L Rep 65, 77 Sol Jo 732.

7 As to cases where the responsibility shifts from the owner see PARA 655.

8 Civil Aviation Act 1982 s 76(2). This provision applies in relation to all surface damage caused by Crown aircraft: Civil Aviation (Crown Aircraft) Order 1970, SI 1970/289, art 2. See, however, as to common law rights of action, PARAS 657-658.

9 As to cases where the responsibility shifts from the owner see PARA 655.

10 Civil Aviation Act 1982 s 76(3). As to common law rights of action see, however, PARAS 657-658.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(5) DAMAGE TO THIRD PARTIES ON THE SURFACE/655. Liability of owner.

655. Liability of owner.

The liability imposed by the statutory provisions relating to nuisance, trespass and surface damage¹ is placed upon the owner of the aircraft, but where the aircraft concerned has been bona fide demised, let or hired out for any period exceeding 14 days to any other person by the owner, and no pilot, commander, navigator or operative member of the crew of the aircraft is in the owner's employment, those provisions have effect as if for references to the owner there were substituted references to the person to whom the aircraft has thus been demised, let or hired out². Unless these conditions are satisfied, however, the statutory liability falls upon the owner, who is thus made liable where the aircraft is lent by him to another or even used by another without his knowledge or consent; but the owner will normally have a right of indemnity against the person actually responsible for the damage³.

1 le the Civil Aviation Act 1982 s 76(1)-(3): see PARAS 653-654.

2 Civil Aviation Act 1982 s 76(4). Section 76(4) is modified so far as relating to Anguilla, Bermuda, the British Antarctic Territory, the British Indian Ocean Territory, Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena and Dependencies, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia, the Turks and Caicos Islands, and the Virgin Islands: see the Civil Aviation Act 1982 (Overseas Territories) (No 2) Order 2001, SI 2001/3367.

3 See the Civil Aviation Act 1982 s 76(3); and PARA 654.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(5) DAMAGE TO THIRD PARTIES ON THE SURFACE/656. Noise and vibration.

656. Noise and vibration.

No action lies in respect of nuisance arising specifically out of the noise and vibration caused by an aircraft in flight when the circumstances of the flight are reasonable¹. Further, no action lies in respect of nuisance by reason only of noise and vibration caused by an aircraft, including a military aircraft², on a government aerodrome³, a licensed aerodrome⁴, or an aerodrome at which the manufacture, maintenance or repair of aircraft is carried out by persons carrying on business as aircraft manufacturers or repairers⁵, as long as the relevant provisions⁶ are duly complied with⁷.

1 See the Civil Aviation Act 1982 s 76(1); and PARA 653. See also PARA 658.

2 As to the meaning of 'military aircraft' see PARA 31 note 5.

3 As to the meaning of 'aerodrome' see PARA 175. As to the meaning of 'government aerodrome' see PARA 178.

4 As to the meaning of 'licensed aerodrome' see PARA 226 note 10. As to the licensing of aerodromes generally see PARAS 226-227.

5 As to manufacturers and repairers see PARAS 366, 422-423.

6 Ie the Air Navigation Order 2005, SI 2005/1970, art 131: see PARA 259. See also the Air Navigation (General) Regulations 2006, SI 2006/601, reg 11; and PARA 259.

7 See the Civil Aviation Act 1982 s 77(2); and the Air Navigation Order 2005, SI 2005/1970, art 131.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(5) DAMAGE TO THIRD PARTIES ON THE SURFACE/657. Relevance of common law rights.

657. Relevance of common law rights.

The statutory exclusion of all rights of action in respect of trespass or nuisance arising by reason only of the flight of an aircraft over any property or the ordinary incidents of such flight¹ only has effect if the flight is carried out at a reasonable height above the ground and if no relevant statutory provision is contravened in respect of the aircraft². Further, the provision which imposes a statutory liability for surface damage on the owner of the aircraft³ does nothing to take away rights of action which may exist against persons other than the owner or operator. Thus in various circumstances it may be necessary to inquire what rights and liabilities exist at common law in respect of the flight of aircraft or in respect of damage caused to persons or property on the surface.

1 See the Civil Aviation Act 1982 s 76(1); and PARA 653.

2 See PARA 653.

3 Ie the Civil Aviation Act 1982 s 76(2), (3): see PARA 654.

Halsbury's Laws of England/AIR LAW (VOLUME 2 (2008) 5TH EDITION)/9. LIABILITIES/(5) DAMAGE TO THIRD PARTIES ON THE SURFACE/658-700. Trespass, nuisance and privacy.

658-700. Trespass, nuisance and privacy.

At common law, the entry by an aircraft into the airspace above a person's land is an actionable trespass if it is at such a height as to affect his rights; the owner of the land has rights in the airspace only to such height as is necessary for the ordinary use and enjoyment of the land and the structures upon it¹.

Such an entry may give rise to a right of action for nuisance; but since no action lies in respect of nuisance without proof of damage, it is thought that the flight of aircraft over or in the vicinity of a person's land is only actionable if it causes, by noise or vibration for example, a substantial interference with the ordinary enjoyment of that land². Subject to provisions relating to aerodromes³, there is no right to land in any place as against the owner of the land or other persons interested in it⁴.

Aircraft noise can amount to an interference with the right to respect for a person's private and family life⁵.

1 *Lord Bernstein of Leigh v Skyviews and General Ltd* [1978] QB 479, [1977] 2 All ER 902; *Staden v Tarjanyi* (1980) 78 LGR 614 at 621-622, CA. See also *Didow v Alberta Power Ltd* [1988] 5 WWR 606, Alberta CA. See **TORT** vol 97 (2010) PARAS 562 et seq, 571.

2 See eg *Dennis v Ministry of Defence* [2003] EWHC 793 (QB), [2003] 2 EGLR 121, [2006] RVR 45 (noise caused by low flying military aircraft an actionable nuisance and a violation of the claimant's private life); and **NUISANCE**.

3 As to aerodromes see PARA 175 et seq.

4 See **TORT** vol 97 (2010) PARA 562 et seq.

5 See *Hatton v United Kingdom* (Application 36022/97) [2002] 1 FCR 732, 34 EHRR 1, ECtHR; cf *Powell v United Kingdom* (1990) 1 S & B Av R III/37, ECtHR; *Dennis v Ministry of Defence* [2003] EWHC 793 (QB), [2003] 2 EGLR 121, [2006] RVR 45. As to the right to respect for a person's private and family life see the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8(1); the Human Rights Act 1998 s 1(3), Sch 1 Pt I art 8; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 149 et seq. Where the provisions of the Civil Aviation Act 1982 s 76(1) apply (see PARA 653), the availability of judicial review proceedings may not provide an effective remedy to protect this right: *Hatton v United Kingdom*. As to the right to an effective remedy see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 163.